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DEC 14 1979
OF MONTANA

NOTICE

To Owners Of REVISED CODES OF MONTANA

This package contains the 1971 Cumulative Pocket Supplements for the Revised Codes of Montana. These supplements include all the new laws and amendments enacted by the Forty-second Legislative Assembly in the Regular Session and in the First Extraordinary Session.

Also contained in the package is a special pamphlet supplement of the laws passed during the Second Extraordinary Session. To have waited for the second special session laws and inserted them in the appropriate titles would have meant a further delay of approximately three months before the pocket parts would have been issued. The ~~special pamphlet is being sent at no extra charge.~~

No pocket part for Replacement Volume Four, Part Two, is included in the supplements. The new book was issued after the adjournment date of the First Extraordinary Session. No changes were made in Titles 70 to 75, inclusive, during either of the special sessions.

The Executive Reorganization Act of 1971 is printed as Title 82A in the Supplement to Volume Five, Part One. This law affects departmental responsibilities for the administration and enforcement of the substantive law throughout the Revised Codes of Montana. Several hundred cross-references pointing to specific sections and subsections of the Reorganization bill have been inserted in the 1971 pocket parts.

The editorial work on the Reorganization Act, the bulk of new and amendatory legislation, the fact that two extraordinary sessions were called after the regular 1971 Session—all contributed to the delay in publishing this year's supplements. Your understanding and indulgence are appreciated.

Cordially yours,
The Publishers

REVISED CODES OF MONTANA

VOLUME 1

Part 1

1971 Cumulative Pocket Supplement

Containing

AMENDMENTS TO PROVISIONS AND NEW PROVISIONS
APPROVED SINCE PUBLICATION OF REPLACEMENT
VOLUME 1 (PART 1) OF THE 1947 REVISED CODES

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1
(PART 1) THROUGH VOLUME 478, PACIFIC
REPORTER (2ND SERIES)

AND

PARALLEL REFERENCE TABLES SUPPLEMENTING
REPLACEMENT VOLUME 1 (PART 1)

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CONSTITUTIONAL AMENDMENTS IN VOLUME 1 (PART 1)

For index see pocket supplement to Replacement Volume 9

Amendments to Constitution, proposal and submission, Art. XIX, sec. 9.
City, town, township, school district, or high school district indebtedness, Art. XIII, sec. 6.
County attorney, qualifications and election, Art. VIII, sec. 19.
District of Columbia voting, U. S. Const. Amd. 23.
Emergency legislative powers, Art. V, sec. 46.
Judges and justices, salary, Art. VIII, sec. 29.
Legislative apportionment, Art. VI, secs. 2 and 3.
Poll tax requirement prohibited in federal elections, U. S. Const. Amd. 24.
Presidential succession and inability, U.S. Const. Amd. 25.
Reorganization of state executive department, Art. VII, sec. 21.

CONSTITUTIONAL CONVENTION

See note following Art. XIX, sec. 8.

AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES

AMENDMENT 14

1. * * * [Same as parent volume.]

2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

3 to 5. * * * [Same as parent volume.]

Compiler's Notes

Section 2 of Amendment 14 is printed above to correct a typographical error in

the parent volume by substituting "excluding" for "including" in the first sentence.

AMENDMENT 23

1. The district constituting the seat of government of the United States shall appoint in such manner as the congress may direct:

A number of electors of president and vice-president equal to the whole number of senators and representatives in congress to which the district would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of president and vice-president, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-third amendment was submitted by Congress on June 16, 1960, declared in force April 3, 1961.

CONSTITUTION OF THE UNITED STATES

AMENDMENT 24

1. The right of citizens of the United States to vote in any primary or other election for president or vice-president, for electors for president or vice-president, or for senator or representative in congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-fourth amendment was submitted by Congress on January 10, 1962, declared in force February 4, 1964.

AMENDMENT 25

1. In case of the removal of the president from office or of his death or resignation, the vice-president shall become president.

2. Whenever there is a vacancy in the office of the vice-president, the president shall nominate a vice-president who shall take office upon confirmation by a majority vote of both houses of congress.

3. Whenever the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the vice-president as acting president.

4. Whenever the vice-president and a majority of either the principal officers of the executive departments or of such other body as congress may by law provide, transmit to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office, the vice-president shall immediately assume the powers and duties of the office as acting president.

Thereafter, when the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the vice-president and a majority of either the principal officers of the executive department or of such other body as congress may by law provide, transmit within four days to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office. Thereupon congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the congress, within twenty-one days after receipt of the latter written declaration, or, if congress is not in session, within twenty-one days after congress is required to assemble, determines by two-thirds vote of both houses that the president is unable to discharge the powers and duties of his office, the vice-president shall continue to discharge the

CONSTITUTION OF THE UNITED STATES

same as acting president; otherwise, the president shall resume the powers and duties of his office.

The twenty-fifth amendment was submitted by Congress on July 7, 1965, declared in force February 23, 1967.

THE ENABLING ACT

§ 1. * * *

References

Spaberg v. Johnson, 143 M 500, 392 P 2d 78.

§ 4. * * *

Crime on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing penalty for trespass to

possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. State v. Danielson, 149 M 438, 427 P 2d 689.

§ 11. That all lands granted by this act shall be disposed of only at public sale after advertising—tillable lands capable of producing agricultural crops for not less than ten dollars (\$10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars (\$5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons, and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for

ENABLING ACT

the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income to the permanent funds.

The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.

NOTE.—This section given as last amended by an act of Congress, June 30, 1967, 81 Stat. at L. 106.

lands for underground storage of natural gas does not violate this section. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 335.

Leasing for Underground Storage

The law authorizing the lease of state

§ 25. * * *

Compiler's Note

A note under this section in the parent volume refers to an act of congress, ch.

183, 62 Stat. at L. 170. The correct date of the act is April 13, 1948, not 1949 as shown in the parent volume.

CONSTITUTION

OF THE

STATE OF MONTANA

ARTICLE III—A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA

Sec. 1.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 2.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 909, 912.

Sec. 3.

Gasoline Tax Refund

Motorboat operator could not raise due process or equal protection objections to gasoline tax statute making no provision for nonhighway use refund since statute made gasoline dealer taxpayer, rather than consumer, and consumer, as motorboat operator, was not proper representative of all nonhighway users. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

Statutes Invalid under This Provision

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under

these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees, was invalid under this section since, by imposing a one per cent tax on gross receipts, rather than on profits, it could have deprived contractors of their right to engage in business as protected by the provisions of this section. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Sections 1-829 to 1-832, imposing a tax on each passenger enplaning on an air common carrier at a Montana airport, are repugnant to this section in creating an unreasonable and undue discrimination. *Northwest Airlines, Inc. v. Joint City-County Airport Board*, 154 M 352, 463 P 2d 470.

Sec. 4.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farm-

ing, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Sec. 6.

References

State ex rel. Peery v. District Court,

145 M 287, 400 P 2d 648; Tooker v. State, 147 M 207, 410 P 2d 923.

Sec. 7.

Description in Search Warrant

Evidence obtained in a search of defendant's home was properly used to convict the defendant of grand larceny, even though the items seized were not specifically described in the search warrant pursuant to which the search and seizure was conducted. State v. Gray, 152 M 145, 447 P 2d 475.

Probable Cause

Where affidavit for search warrant merely stated that affiant had knowledge and believed that designated articles taken in burglary were located on the premises but contained no facts for judicial determination, probable cause was not established. Application of Gray, — M —, 473 P 2d 532.

Where affidavit for search warrant did not establish probable cause, the search warrant was illegally issued and void, and the admission as evidence of the fruits of the search was prejudicial error. Application of Gray, — M —, 473 P 2d 532.

Sufficiency of Affidavit

Additional information besides that con-

tained in affidavit for search warrant could not be used to uphold its issuance, since the affidavit itself is required to provide exclusive support for issuance of search warrant. Application of Gray, — M —, 473 P 2d 532.

When Rights May Be Waived

Where defendant admitted a sheriff, a deputy sheriff, and two livestock inspectors onto his ranch on three separate occasions to inspect his calves, and helped them to corral the animals, he waived his constitutional right against unreasonable search and seizure by consenting to the actions of the state authorities. State v. Peters, 146 M 188, 405 P 2d 642.

Constitutional rights of defendant convicted of grand larceny of cattle were not violated by evidence of worked-over brands given by witnesses privileged to travel on open range on which defendant had mere nonexclusive license to graze cattle and further evidence obtained while removing cattle in vicinity of defendant's home with defendant's consent. State v. Johnson, 149 M 173, 424 P 2d 728.

Sec. 8.

Necessity for Indictment

Charges made by information filed after hearing before magistrate, or by leave of district court are sanctioned by statute and constitution and defendant may be held to answer, even for capital crime, without presentment or indictment by grand jury. State v. Corliss, 150 M 40, 430 P 2d 632, certiorari denied, 390 US 961, 88 S Ct 1063.

Complaint in a justice court, rather than indictment, was proper on charge of misdemeanor of obtaining money by false pretenses. Petition of Brown, 150 M 483, 436 P 2d 693.

Preliminary Hearing

Grant of leave to file information directly, without preliminary hearing, was neither error nor abuse of statutory privilege to bypass preliminary hearing, where motion to file directly was supported by affidavit and where preliminary hearing would have served no purpose. State v. Johnson, 149 M 173, 424 P 2d 728.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211; Petition of Jones, 146 M 305, 405 P 2d 978; Petition of Evans, 146 M 405, 409 P 2d 456; Tooker v. State, 147 M 207, 410 P 2d 923.

Sec. 10.

Freedom of Speech

Bank president's statement that he was displeased with verdict against bank and that jurors could not expect to do business with bank was valid exercise of free speech under this section, since statement was made 22 days after final disposition

of case and since court of which jury is a part is not above individual criticism after case is disposed of. State ex rel. Polish v. District Court of Third Judicial District in and for County of Powell, — M —, 478 P 2d 270.

Sec. 11.**Ex Post Facto Application**

A parole and probation statute which had not been in effect at the time prisoner began serving his sentence but was in effect following a new trial in which prisoner was reconvicted and began again serving a ten-year sentence, which had the effect of increasing prisoner's time by allowing less time off for good behavior than did the prior probation law, was ex post facto as to that prisoner. *State ex rel. Nelson v. Ellsworth*, 142 M 14, 380 P 2d 886.

General saving clause, section 43-514, interpreted so as to preserve for prosecution all criminal offenses committed prior to repeal, absent an express legislative intent to contrary contained in repealing

act, does not violate this section as constituting ex post facto legislation. *State ex rel. Huffman v. District Court*, 154 M 201, 461 P 2d 847.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

Sec. 14.**Acts Not Violating This Provision**

The requirements of subsection 9 of section 11-602, R. C. M. 1947, that a portion of platted subdivisions be dedicated to public park purposes are not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

Damages Comprehended by This Provision

Where plaintiff's property was within the announced route of proposed interstate highway and he was therefore unable to sell, lease, develop or finance said property for a period of five years after the announcement, he was allowed no recovery under this section as no property was actually taken or damaged by the state. *Bakken v. State Highway Commission*, 142 M 166, 382 P 2d 550.

Easement as Property

A ditch is an easement, is property as used in this section, and may not be taken for public purpose without just compensation. *Colarchik v. Watkins*, 144 M 17, 393 P 2d 786.

Just Compensation

In eminent domain proceedings, the jury findings will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided by this section. *State v. Peterson* 134 M 52, 328 P 2d 617, 620.

An owner may testify as to the reason-

able value of the property for the general use to which he is putting it, but to go beyond that field, in estimating its worth, he must possess the qualifications required of a general witness as to value. *Alexander v. State Highway Commission*, 142 M 93, 381 P 2d 780, distinguished in 142 M 256, 260, 384 P 2d 770; *State Highway Commission v. Keneally*, 142 M 256, 384 P 2d 770.

Where there was conflicting testimony as to amount of damage to plaintiff's land after condemnation by state of part of that land, jury's finding as to amount of damage for the injury done was not so excessive as to be a violation of this section providing for just compensation. *State Highway Commission v. Biastoch Meats, Inc.*, 145 M 261, 400 P 2d 274.

In eminent domain proceedings the findings of the district court will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by this section. *State Highway Commission v. Woodcock*, 147 M 291, 411 P 2d 357.

Where condemnee's house was between fifty and sixty years old and had been converted into a multiple family dwelling, court did not err in excluding evidence of reconstruction costs or comparable sales elsewhere in determining value of the property since there was no way of determining depreciation of the old house in arriving at reconstruction cost figures, nor were there sufficient comparable sales in the area. *State Highway Commission v. Tubbs*, 147 M 296, 411 P 2d 739.

Where amount of just compensation as determined by jury is based on credible evidence as to market value of highest

and best use for which land is available, the verdict and judgment will not be set aside. *State Highway Commission v. Vaughan*, — M —, 470 P 2d 967.

Payment or Tender of Compensation

Where party sued the state for damages and just compensation, the action was treated as any other damage action and on appeal plaintiff could not claim it to be an inverse condemnation action and

require the state to pay into court the amount of damages prayed for in the complaint. *State ex rel. State Highway Commission v. District Court*, 142 M 198, 383 P 2d 481.

References

Cited or applied in *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270, 273.

Sec. 15.

Previously Acquired Rights

Mandamus to compel fish pond licensee, in compliance with later statute, to construct fish ladder on diversion dam installed seven years before with approval of commission would be denied on theory that individuals who have put water to beneficial use should not have their rights arbitrarily diluted under claim of sovereign right. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

Sec. 16.

Competency of Court-appointed Counsel

Failure of court-appointed counsel to object to certain remarks by the prosecutor was not alone sufficient to deprive defendant of due process under this section in the absence of a showing that counsel displayed such a lack of diligence and competence as to reduce the trial to a "farce or a sham." *State v. Noller*, 142 M 35, 381 P 2d 293.

Impartial Jury

District court did not abuse its discretion in denying defendant's motion for change of venue with leave to renew after trial jury was selected, where affidavits and testimony were inconclusive as to existence of county-wide bias and prejudice against defendant, and where motion was not renewed at time jury was finally selected. *State v. Logan*, — M —, 473 P 2d 833.

Perfection of Appeal

Even though supreme court dismissed appeal in criminal case because court-appointed counsel was late in filing notice of appeal, the court considered the questions presented on appeal because defendant had no voice in the appointment of counsel. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

Presumption of Innocence

Instruction that while mere unexplained possession of stolen property was not sufficient to justify conviction, one found in possession of property that may have

Rights-of-Way of Necessity

There can be implied reservations or implied grants of easement by necessity in Montana. *Thisted v. Country Club Tower Corp.*, 146 M 87, 103, 405 P 2d 432, overruling *Herrin v. Sieben*, 46 M 226, 127 P 323; *Violet P. Martin*, 62 M 335, 205 P 221 and *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984.

been stolen must explain such possession in order to remove effect of that fact as circumstance to be considered with other evidence pointing to guilt, did not deprive defendant of presumption of innocence. *State v. Gray*, 152 M 145, 447 P 2d 475.

Right of Accused To Meet Witnesses against Him Face to Face

The right to confrontation is not an absolute one, and may be circumscribed by the right to take depositions as provided for in section 17, article III of the Montana constitution. *Tooker v. State*, 147 M 207, 410 P 2d 923.

Right To Appear and Defend in Person

A defendant's constitutional and statutory right to be present at trial does not encompass proceedings before the court involving matters of law, but only where the jury is hearing his cause or where his presence is essential to a fair and just determination of a substantial issue. *State v. Peters*, 146 M 188, 405 P 2d 642.

This provision and former section 94-7004, requiring the presence of a defendant at trial, do not require that the defendant be present at a hearing on a motion for a new trial because such a hearing is held after the verdict has been rendered and is not part of the trial. *State v. Peters*, 146 M 188, 405 P 2d 642.

Right to Introduce Evidence

In a murder prosecution the court properly refused to permit the defendant to introduce the results of a lie-detector test

given five and one-half months after the crime to which it referred. *State v. Holly-wood*, 138 M 561, 358 P 2d 437, 444.

Right to Speedy Trial

Convicted forger's right to a speedy trial was not violated by delaying the trial until the defendant had been paroled from the state prison. *State v. Mielke*, 148 M 320, 420 P 2d 155, 157.

In determining whether right to speedy trial had been violated for purposes of constitution and statute requiring dismissal of action if not brought to trial within six months after filing of information,

court would count only days of delay which had not been caused by defendants, sum total of which was less than six months, notwithstanding that more than six months had passed since filing of information. *State ex rel. Thomas v. District Court, Thirteenth Judicial District*, 151 M 1, 438 P 2d 554.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 362; *State v. Moran*, 142 M 423, 384 P 2d 777; *Petition of Ditton*, 145 M 594, 403 P 2d 205.

Sec. 17.

Right To Confront Witnesses

This provision, allowing for the taking of depositions, does not violate section 16, article III of the Montana constitution, which provides for the right to confrontation, and depositions taken under

authority of this provision are admissible at trial upon a showing that the witness is either dead or not within the jurisdiction. *Tooker v. State*, 147 M 207, 410 P 2d 923.

Sec. 18.

Double or Former Jeopardy

Defendant charged with sale of intoxicating liquor to a minor was not placed in former jeopardy in violation of this section, by a dismissal of the complaint upon his demurrer in justice court without any further proceedings. *State v. Moore*, 138 M 379, 357 P 2d 346, 347.

Where the defendant was charged with twenty-two counts of statutory rape, conviction on one or more of those counts could not be imposed as a bar to a prosecution for any of the other offenses charged, and where they were set forth separately in the information, there was no violation of state or federal constitutional prohibitions. *State v. Boe*, 143 M 141, 388 P 2d 372.

Imprisonment imposed as a punishment under a valid judgment and sentence in a criminal prosecution places the defendant once in jeopardy within the ambit of this section. In *re Williams' Petition*, 145 M 45, 399 P 2d 732.

Jeopardy, as applied to double punishment in the constitutional sense, requires punishment imposed as such and for that purpose and has no application to probationary rules placing reasonable restraints on a person's actions and conduct for the purpose of his rehabilitation. In *re Williams' Petition*, 145 M 45, 399 P 2d 732.

Information in five counts, three of which alleged larceny of more than one cow, did not violate former jeopardy provision in that each count stated separate offense under grand larceny statute mak-

ing theft of each animal separate and distinct offense and in view of further statute permitting information to charge more than one offense in separate counts. *State v. Johnson*, 149 M 173, 424 P 2d 728.

Statute providing for a penalty of \$1,000 for any excess freight weight over 25,000 pounds is penalty in addition to other penalties provided by statute and violates neither double jeopardy provision of Constitution nor statute providing that when action is punishable under different provisions of Code, punishment may be had under only one of them. *State ex rel. Oleson v. District Court, Eleventh Judicial District*, 151 M 12, 438 P 2d 560.

Self-Incrimination

Portion of trial court's instruction to jury which stated that failure of defendant to explain his possession of stolen property pointed to his guilt did not amount to forbidden comment on defendant's failure to testify since such explanation could have been given by defendant, by having another person testify, or by introducing real evidence. *State v. Branch*, — M —, 465 P 2d 821.

Prosecutor's statement to jury on voir dire that rape case has only two witnesses, the people involved, and that jury must weigh their respective testimony if defendant chooses to testify did not prejudice defendant's case by compelling him to testify contrary to his rights under this section. *State v. Anderson*, — M —, 476 P 2d 780.

Sec. 19.

Amount of Bail

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

Sec. 20.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. 2, before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1063.

Sec. 23.

Declaratory Judgment

A party has a right to a jury trial on demand where the suit is for a declaratory judgment and there are triable issues of fact. *Mahan v. Hardland*, 147 M 78, 410 P 2d 156.

Deliberations of Jury

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of the jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. *Schmoyer v. Bourdeau*, 148 M 340, 420 P 2d 316, 317.

When the jury retires to the jury room it should be concerned only with the

Court did not err in refusing defendant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a very reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407, 408.

Capital Offenses

First-degree murder is a bailable capital offense except in cases where it has been shown that the proof is evident or the presumption great. *State v. Zachmeier*, 153 M 64, 453 P 2d 783.

References

Cited in *State v. McLeod*, 131 M 478, 311 P 2d 400, 407; *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

evidence and the law; the verdict, thus, is the result of a fair expression of opinion by all the jurors. *Schmoyer v. Bourdeau*, 148 M 340, 420 P 2d 316, 317.

Equitable Actions

In action to foreclose mortgage securing promissory notes, defendant was not entitled to jury trial as matter of right on his cross-complaint and counterclaim for damages, since actions for mortgage foreclosures are equitable and triable by court without jury and cannot be transformed into actions at law merely by raising an issue of law in answer. *Citizens State Bank v. Duus*, 154 M 18, 459 P 2d 696.

References

Cited or applied in *Application of Banschbach*, 133 M 312, 323 P 2d 1112, 1113; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139.

Sec. 24.

Penalty Assessment on Forfeited Bail and Fines

In so far as statute provided for penalty assessment on forfeited bail and on fines, it was void as violation of consti-

tutional provision that laws for punishment of crime should be founded on principles of reformation and prevention. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

Sec. 27.**Arbitrary Exercise of Licensing Power**

The arrest of a person for operating a dry cleaning call office within the city without a license, where city's licensing ordinance did not cover such a business, violated the provisions against the taking of property without due process of law. *State ex rel. Willumsen v. City of Butte*, 135 M 350, 340 P 2d 535.

Criminal Appeals

Dismissal of a criminal appeal for failure to file timely notice of appeal is not a denial of due process, even though the failure was that of court-appointed counsel in whose appointment defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 419.

Destruction of Property Without a Trial or Hearing

Proceedings for the destruction of property in many cases must necessarily be summary and without a previous trial or hearing in such cases, and such proceedings are due process. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Discriminatory Tax

Sections 1-829 to 1-832, imposing a tax on each passenger emplaning on an air common carrier at a Montana airport, are repugnant to this section in creating an unreasonable and undue discrimination. *Northwest Airlines, Inc. v. Joint City-County Airport Board*, 154 M 352, 463 P 2d 470.

Fundamental Rights

"Due process of law" refers to and means certain fundamental rights which our system of jurisprudence has always recognized, that is, of requiring notice to be given and a hearing had before the property may be taken, or impressed with a lien, giving to the owner thereof these constitutional prerogatives. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 505, distinguished in 138 M 69, 354 P 2d 1056, 1058, and in 146 M 425, 407 P 2d 703, 706.

Gasoline Tax Refund

Motorboat operator could not raise due process or equal protection objections to gasoline tax statute making no provision for nonhighway use refund since statute made gasoline dealer taxpayer, rather than consumer, and consumer, as motorboat operator, was not proper representative of all nonhighway users. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

Hearings by Public Service Commission

Where audit had been requested in utility rate increase case by opponents of

increase, both sides were given ample time to present evidence and cross-examine witnesses, opponents were permitted to go into utility books with expert witnesses, and the public service commission hired independent rate experts, opponents were not denied a full and fair hearing because of posthearing audit made by the employees of the commission. *Cascade County Consumers Assn. v. Public Service Commission*, 144 M 169, 394 P 2d 856, 869, certiorari denied, 380 US 909, 85 S Ct 891. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Although section 70-104 authorizes an informal hearing by public service commission in proceedings to set aside rate increases, fundamentals of fair hearing were denied parties opposing rate increase when a hearing was held by the public service commission when the opponents were not present, and when the testimony of that hearing was not spread on the record. *Cascade County Consumers Assn. v. Public Service Commission*, 144 M 169, 394 P 2d 856, 864, certiorari denied, 380 US 909, 85 S Ct 891. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Insanity Determination

Commitment of patient to state hospital in civil proceeding, without a jury trial or benefit of counsel in face of protest to jurisdiction of judge on basis that he had previously sentenced patient to five-year prison sentence did not constitute violation of due process since patient had neither mentioned nor requested counsel or jury trial at time of hearing and since determination of sanity question was made by medical jurors and not by judge. *Petition of Brown*, 151 M 440, 444 P 2d 304.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

The former health district law (69-801 et seq.) does not violate this section. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1058.

Milk Control Act

The price-fixing provisions of the Milk Control Act (27-401 et seq.) withstand the due process test. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

Municipal Ordinances

A city ordinance which imposed a storm sewer service charge applicable to

premises within the city limits did not violate this section. *City of Billings v. Nore*, 148 M 96, 417 P 2d 458, 465.

Penalty Assessment on Bail

Statute providing for penalty assessment on bail violated due process clause in that assessment amounted to tax on right to bail, revenue being earmarked for high school driver education. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

Right to Counsel

Petitioner was not denied his constitutional right to counsel under this section in that he was intoxicated when he received Miranda warning at time of arrest, since morning following his arrest he recalled having been warned of his rights upon arrest. *Petition of Fitzpatrick*, 154 M 512, 464 P 2d 507.

Right to Engage in Business

In Montana, every person has a right to operate a business, subject to the applicable laws of the state and ordinances of the city, and he may not be deprived of such property right without due process of law as guaranteed by this provision. *State ex rel. Bennett v. Stow*, 144 M 599, 399 P 2d 221.

Rural Fire Districts Law

Rural fire districts law, section 11-2008, before 1957 amendment, was unconstitutional as being in direct conflict with this section. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 354 P 2d 1058.

Statutes and Proceedings Held Valid Under This Provision

A city, the chief of police, and police officers were not liable to a dog owner for damages, where the owner's dog was killed by officers acting under an emergency quarantine measure which was passed to meet a threatening situation involving rabies. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29.

A rule made by a board of health which has a relation to securing protection from bites of animals which may be rabid is a proper exercise of its functions, and determination of the means of meeting a threatening situation has been vested in the board of health, and not in the courts. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or

other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Where developers of trailer park had complied with state and city ordinances and had been granted a state license to operate the park, denial of a license by the city council for matters not contained in, nor required to be observed by the city health ordinance, thereby applying a different standard than that applied to others engaged in the same line of business, deprived developers of a property right without due process. *State ex rel. Bennett v. Stow*, 144 M 599, 399 P 2d 221.

Act providing for nonresident contractor's license fee (chapter 277, Laws of 1965), imposing a tax of one per cent of gross receipts in addition to a \$25 license fee, was arbitrary and unreasonably discriminatory in that it taxed on the basis of gross receipts rather than on profits. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Where several jury members read newspaper article in jury room that defendant had pleaded guilty to a manslaughter charge arising out of the same events upon which the present suit for damages was brought, even though it was uncertain whether prejudicial or not and not read until after the verdict was rendered but before damages were established, error was inherently prejudicial and new trial was ordered. *Putro v. Baker*, 147 M 139, 410 P 2d 717.

Sufficiency of Evidence

Where medical testimony pertaining to defendant's antisocial nature and difficulty in controlling his sexual impulses may have established the defendant as a sexual deviate who should be confined for the protection of society, but was not sufficient to sustain the charge of attempting to commit a lewd and lascivious act upon a child, it was reversible error to convict the defendant of the felony. *State v. Green*, 143 M 234, 388 P 2d 362.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. (2), before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1064.

References

Cited in *State ex rel. Burns v. City of Livingston*, 144 M 248, 395 P 2d 971, 973; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

Sec. 29.**Taxation**

The "unless" clause of this section operates in the area of taxation and Art. XII, section 1a, authorizing an income tax, is merely permissive. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F

Supp 274, 279; *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 653; *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139; *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 801, 78 ALR 2d 1012; *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556; *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 763.

ARTICLE IV—DISTRIBUTION OF POWERS**Sec. 1.****Counties**

Counties are administrative or executive bodies of the state and the same rules apply as apply to any state agency in so far as this section is concerned. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1024.

Delegation of Powers by the Legislature

Former section 69-809 and the provisions of former section 69-813, relating to rules and regulations by health districts, violate this section by delegating legislative power to a board. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1063.

Chapter 41 of Title 16, giving the county commissioners power to establish zoning districts and to create a commission, contains sufficient guidelines so that it is not an invalid delegation of legislative powers. *City of Missoula v. Missoula County*, 139 M 256, 362 P 2d 539, 542, explained in 362 P 2d 1021, 1023; *Doull v. Wohlschlager*, 139 M 274, 362 P 2d 542, 543.

The provisions of section 11-3801 et seq., granting zoning powers to city-

county planning boards and to county commissioners, are invalid as an unauthorized delegation of legislative power to counties. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

Statutes Held Not To Violate This Provision

Section 93-901, dealing with disqualification of judges, does not violate the separation of powers provision of this section in that it does not impinge upon the existence or supremacy of the judicial system nor alter its jurisdiction or duties, but is a reasonable manner of providing a fair trial for all litigants. *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dissenting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

ARTICLE V—LEGISLATIVE DEPARTMENT**Sec. 1.****References**

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dis-

senting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 4.**Repeal**

This section was repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Constitutionality

The portion of this provision which

states that "there shall be no more than one senator from each county" is void and unconstitutional in that it violates the equal protection clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

Sec. 5.**Cross-References**

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 10.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 11.

References

State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

Sec. 18.

Removal of State Officer

The provisions of section 59-405, that where the term of office is not fixed by law the office is held at the pleasure of

the appointing power, do not violate this section. State ex rel. MacGillvra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

Sec. 20.

References

Cited in Morgan v. Murray, 134 M 92, 328 P 2d 644, 654.

Sec. 22.

Cross-References

Printing defined, sec. 19-103.1.

Sec. 23.

Acts Not Violating this Provision

Laws of 1955, chapter 204, amending section 84-4502 and carrying a title which is practically identical with the heading of this section as stated in the 1947 Codes and properly including additional requirements for bringing actions to recover taxes paid under protest, does not violate this constitutional provision. Van Tighem v. Linnane, 136 M 547, 349 P 2d 569, 571.

The title of the County Water District Act (16-4501 to 16-4534) does not violate this section. Parker v. County of Yellowstone, 140 M 538, 374 P 2d 328, 334.

Deceptive Title

Where title to appropriation bill described an appropriation to carry out provision of specific statutory law and then proceeded to nullify and defeat mandatory and all-inclusive character of that specific statutory law without reference thereto in title, latter provision was deceptive and misleading in violation of this section and therefore void. City of Helena v. Omholt, — M —, 468 P 2d 764.

Sec. 24.

References

State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

Effect of Subsequent Codification on Defect

Section 91-4321 as it is now written was enacted in 1943, and was carried forward in our Codes of 1947 without change. The 1947 Codes were regularly adopted by the legislature with this act incorporated therein without reference to its original title. Any defect in title was cured by its adoption into the 1947 Code. State v. Rice, 134 M 265, 329 P 2d 451, 453.

Initiative Measure Unconstitutional

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, containing more than one subject, violated this section. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

Penalty Assessment on Bail

In so far as statute provided for penalty assessment on forfeited bail and on fines it was void as a violation of the constitutional provision that no bill shall be passed containing more than one subject which shall be clearly expressed in its title. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

Sec. 26.**Divorce Proceedings**

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Interest on Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by section 47-125 and constituted a special law regulating the rate of interest on money, proscribed by this section, the federal court applied the abstention doctrine and postponed further action until the issue was determined by the supreme court of Montana. *B-W Acceptance Corp. v. Torgerson*, 234 F Supp 214, 216.

Operation and Effect in General

Chapter 34, Laws of 1957 (43-709 to 43-715), creating the legislative council, does not violate this section. *State ex rel. James v. Aronson*, 132 M 120, 314 P 2d

Sec. 29.**Relocation of Utilities**

The provisions of former section 32-1625, relating to the costs of relocating

Sec. 30.**Cross-References**

Printing defined, sec. 19-103.1.

Sec. 32.**Construction**

This section refers to the raising of money for defraying the expenses of the general government. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

License Tax

Bills imposing tax or license fee to enforce policing regulation are not revenue raising measures. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

Local Taxes

Laws delegating authority to local governmental units to levy and collect taxes

Sec. 34.**Laws Not Violating This Provision**

Statute amending initiative act provid-

ing for honorarium for World War II veterans so as to make Korean veterans

849, overruling *State ex rel. Mitchell v. Holmes*, 128 M 275, 274 P 2d 611.

Special or Local Laws Forbidden

(Deduction of workmen's compensation benefits in determining retirement pay of public employee.) The provision in section 68-901, subd. (h), requiring the deduction of workmen's compensation benefits in determining the retirement pay of a public employee who is receiving workmen's compensation for a total disability is unconstitutionally discriminatory in treating totally disabled employees less favorably than those only partially disabled. *State ex rel. Morgan v. White*, 136 M 470, 348 P 2d 991.

Special or Local Laws Forbidden

Small Tract Financing Act's three-acre classification was not special legislation favoring rural landowners; it was reasonable in that it fostered development of state, added to its prosperity and treated all those within class equally. *Great Falls Nat. Bank v. McCormick*, 152 M 319, 448 P 2d 991.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

for local purposes are not bills for "raising revenue" within the meaning of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

Operation and Effect

Chapter 197, Laws of 1957, authorizing indebtedness to be incurred by state for construction of educational facilities is illegal, unconstitutional and void, for the reason that it was a revenue bill which originated in the senate, contrary to the interdiction of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

eligible to receive honorariums did not violate this section. *Cottingham v. State*

Board of Examiners, 134 M 1, 328 P 2d 907, 920.

Sec. 35.

Laws Violating This Provision

An appropriation made to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were not under the control of the state, was

prohibited by this section even though the legislation was for a public purpose. *Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars*, 141 M 500, 379 P 2d 107.

Sec. 36.

Laws Not Violating This Provision

Section 27 of the County Water District Act (16-4527) does not violate this section by delegating to a corporation the power to tax for the general health, safety, and welfare of property owners without regard to benefits to the property so

taxed. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 331.

The price-fixing provisions of the Milk Control Act (sections 27-401 (k), 27-405 (2), 27-407, 27-416) do not violate the provisions of this section. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 515, 516.

Sec. 39.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 36.

References

In re *Montana Trust and Legacy Fund*, 143 M 218, 388 P 2d 366; *United States v. Christensen*, 218 F Supp 722, 729.

Sec. 40.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

Sec. 45.

Repeal

This section was repealed by Ch. 273, Laws 1965, adopted at the general election

of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Sec. 46. The legislative assembly in order to insure continuity of state and local governmental operations in a period of emergency resulting from a disaster caused by enemy attack may enact laws:

(1) To provide for prompt and temporary succession to the powers and duties of elected and appointed public officers who are killed or incapacitated.

(2) To adopt other measures that may be necessary to insure the continuity of governmental operations.

Such laws shall be effective only during the emergency that affects a particular office or governmental operation, and such laws may deviate from other provisions of the Montana constitution, including but not limited to the following sections:

(1) Section 3, Article X, seat of state government.

(2) Section 2, Article XVI, seat of county governments.

- (3) Section 16, Article VII, succession to governor.
- (4) Section 4, Article XVI, vacancy on board of county commissioners.
- (5) Section 6, Article XVI, other vacancies in county government.
- (6) Section 45, Article V, vacancies in legislative assembly.
- (7) Section 11, Article VII, special legislative sessions.
- (8) Section 5, Article V, length of legislative session.
- (9) Section 10, Article V, quorum to do business in each house.
- (10) Section 6, Article XIX, location of county offices.
- (11) Section 1, Article VII, duties of executive officers of state.
- (12) Section 7, Article VII, appointments by governor.

Compiler's Notes

This constitutes the new section added to the constitution by act approved March 9, 1965 (Ch. 243, Laws 1965), adopted at

the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

ARTICLE VI—APPORTIONMENT AND REPRESENTATION

Sec. 1.

Reapportionment

Congressional districting under chapter 44 of the Laws of 1917 (43-107) was unconstitutional where legislature had failed in three successive sessions following the

1960 census to redistrict and where the two districts then existing showed a disparity in population of 126,332 persons. *Roberts v. Babcock*, 246 F Supp 396.

Sec. 2. (1) The senate and house of representatives of the legislative assembly each shall be apportioned on the basis of population.

(2) The legislative assembly following each census made by the authority of the United States, shall revise and adjust the apportionment for representatives and senators on the basis of such census.

(3) At such time as the constitution of the United States is amended or interpreted to permit apportionment of one house of a state legislative assembly on factors other than population, the senate of the legislative assembly shall be apportioned on the basis of one senator for each county.

Compiler's Notes

This constitutes sec. 2 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966. The amendment added paragraphs (1) and (3) and eliminated a provision for a state census.

sessions following the 1960 census in conformity with this provision and districts under chapter 44 of the Laws of 1917 (43-107) had a disparity in population of 126,332, governor and secretary of state were enjoined from proclaiming, certifying or conducting election of members of the house of representatives and court established new districts for future elections. *Roberts v. Babcock*, 246 F Supp 396.

Reapportionment

Where legislature failed to reapportion congressional districts in three successive

Sec. 3. Senatorial and representative districts may be altered from time to time as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be.

Compiler's Notes

This constitutes sec. 3 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation,

December 6, 1966. The amendment made the section applicable to senatorial districts and eliminated a provision prohibiting the division of counties in the formation of representative districts.

DECISIONS UNDER FORMER PROVISIONS**Reapportionment**

The provision of former section that "no county shall be divided in the formation of representative districts" was valid since it did not conflict with the equal protec-

tion clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

Secs. 4 to 6.**Repeal**

These sections were repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Constitutionality

Sections 4 and 5 are void and unconstitutional in that they violate the equal protection clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

ARTICLE VII—EXECUTIVE DEPARTMENT**Sec. 1.****Cross-References**

Section 46, Article V would permit deviation from this section under emergency conditions.

mission in whatever type of case arises," was proper and did not infringe on any powers, duties or responsibilities of state attorney general. *Woodahl v. State Highway Commission*, — M —, 465 P 2d 818.

Attorney General—Duties and Powers of

Resolution adopted by state highway commission authorizing chief counsel thereof "to employ and engage such outside fee counsel as he, in his discretion shall deem reasonable and necessary, to represent the Mountain Highway Com-

References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion); *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 931.

Sec. 7.**Cross-References**

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 8.**Cross-References**

Examiner as head of department of business regulation, sec. 82A-401.

Functions retained by examiner after reorganization, sec. 82A-903(3).

Functions retained by state examiner, sec. 82A-403(1).

Sec. 9.**Parole**

The board of pardons has no power to pardon or commute a sentence, and when it grants a parole, the effect is not to

extinguish the sentence but merely to change the conditions of custody. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 556.

Sec. 11.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 12.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. State ex rel. Livingstone v. Murray, 137 M 557, 354 P 2d 552, 556.

Sec. 15.

Casting Deciding Vote

The lieutenant governor of Montana, while presiding as president of the senate, possessed the requisite power to enable or entitle him to cast the deciding vote on third reading of House Bill No. 342, as amended [1961 amendment of section 31-135], at a time when the senators then present and voting were equally di-

vided. State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Sec. 16.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 20.

Cross-References

Board of examiners continued, sec. 82A-207.

Board of examiners functions transferred to department of administration, sec. 82A-203(2).

Board of prison commissioners continued, sec. 82A-208.

Board of prison commissioners functions transferred, sec. 82A-203(1).

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Sec. 21. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of the state, attorney general, state treasurer, state auditor, and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than July 1, 1973. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a principal department.

Compiler's Notes

This constitutes the new section added to the constitution by act approved March 17, 1969 (Ch. 1, Ex. Sess., Laws 1969), adopted at the general election of November 3, 1970, and effective under the gov-

ernor's proclamation of November 20, 1970.

Cross-References

Implementation of reorganization amendment, secs. 82A-101 to 82A-2103.

ARTICLE VIII—JUDICIAL DEPARTMENTS

Sec. 1.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211; State v. Frodsham, 139 M 222, 362 P 2d 413, 416; State ex

rel. Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Johnson v. District Court, 147 M 263, 410 P 2d 933.

Sec. 2.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1; State ex rel.

Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 3.

District Court Jurisdiction

District judge sitting for disqualified district judge could not review validity and merits of orders entered by disqualified judge since review amounted to attempt to exercise appellate jurisdiction in violation of constitution. State ex rel. State Highway Commission v. Kinman, 150 M 12, 430 P 2d 110.

writ, to effectuate its appellate jurisdiction, thus to insure the aggrieved board an appeal that otherwise might be of no value. Gill v. Rafn, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799, 78 ALR 2d 1012.

Exclusive Power

The constitution vests in the courts the exclusive power to construe and interpret legislative acts, as well as provisions of the constitution. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 913.

Supervisory Control—Scope of Power

Writ of supervisory control was necessary and proper to compel district court to dismiss removal petition that could not be granted even if facts alleged were proved. State ex rel. Arnot v. District Court of First Judicial District In and For County of Lewis and Clark, — M —, 472 P 2d 302.

Scope of Power to Issue Writs in General

Even if a stay, in a case where a writ of mandate is issued by a district court to compel the issuance of a license, is not provided for in the code, still the supreme court has power under this section to issue a supersedeas, or other appropriate

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 11.

District Court Jurisdiction

District judge sitting for disqualified district judge could not review validity and merits of orders entered by disqualified judge since review amounted to attempt to exercise appellate jurisdiction in violation of constitution. State ex rel. State Highway Commission v. Kinman, 150 M 12, 430 P 2d 110.

prison for postconviction relief if inmate was sent to prison from judicial district in which petition is filed. Gransberry v. State, 149 M 158, 423 P 2d 853.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. Trudgen v. Trudgen, 134 M 174, 329 P 2d 225, 232.

Prohibition—Ministerial Function

This section does not give the district courts the jurisdiction to issue a writ of prohibition to control the discretion of an administrative body in carrying out a ministerial function. State ex rel. Lee v. Montana Livestock Sanitary Board, 135 M 202, 339 P 2d 487.

Postconviction Relief

District court has the jurisdiction to consider petition from inmates of state

References

Cited or applied in Hustad v. Reed, 133 M 211, 321 P 2d 1083, 1092; Deich v. Deich, 136 M 566, 323 P 2d 35, 38; State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54;

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; Petition of Kelly, 146 M 484, 408 P 2d 478; State ex rel.

Johnson v. District Court, 147 M 263, 410 P 2d 933.

Sec. 12.

References

Cited or applied in Deich v. Deich, 136 M 566, 323 P 2d 35, 38; State ex rel.

Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 13.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 14.

References

Cited or applied in Deich v. Deich, 136 M 566, 323 P 2d 35, 38.

Sec. 15.

Notice of Appeal

Even though the supreme court dismissed an appeal in a criminal case because of failure to file timely notice of appeal, the court considered the questions raised, where the fault was that of court-appointed counsel in whose appointment

defendant had no voice. State v. Frodsham, 139 M 222, 362 P 2d 413, 418.

References

Cited in Gill v. Rafn, 133 M 505, 326 P 2d 974; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

Sec. 16.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 17.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

Compiler's Note

This constitutes sec. 19 of article VIII as amended by act approved March 6, 1961 (Ch. 164, Laws 1961), adopted at the general election of November, 1962.

This amendment increased the county attorneys' term of office from two to four years and eliminated a provision applicable only to the first county attorneys elected under the Constitution.

Sec. 21.

Penalty Assessments on Fines

Statute providing penalty assessments in addition to statutory fines was void for indirectly enlarging jurisdiction of justice and police courts in terms of maximum fine which may be imposed for offense

charged. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

References

State ex rel. Johnson v. District Court, 147 M 263, 410 P 2d 933.

Sec. 24.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

Sec. 26.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 28.

References

Cited or applied in First Nat. Bank of

White Sulphur Springs v. Stoyanoff, 137 M 20, 349 P 2d 1016, 1020.

Sec. 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be diminished during the terms for which they shall have been respectively elected.

Compiler's Note

This constitutes sec. 29 of article VIII as amended by act approved February 27, 1963 (Ch. 92, Laws 1963), adopted at the general election of November 3, 1964.

This amendment eliminated a provision prohibiting salary increases during terms for which elected, and it also deleted a sentence setting the salaries of the first justices and judges.

**ARTICLE IX—RIGHTS OF SUFFRAGE AND QUALIFICATIONS
TO HOLD OFFICE**

Sec. 2. Every person of the age of nineteen (19) years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and, except as hereinafter provided, upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law. If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question. Provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned or restored to citizenship by the governor; provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution; provided, that after the expiration of five years from the time of the

adoption of this constitution, no person except citizens of the United States shall have the right to vote.

Compiler's Notes

This constitutes sec. 2 of Article IX as amended by act approved January 31, 1969 (Ch. 14, Laws 1969), adopted at the general election of November 3, 1970, and effective under the governor's proclamation of November 20, 1970. The amendment changed the voting age from 21 to 19 years.

Proposed Amendment

Chapter 159, Laws 1971, proposes to amend this section to read as follows:

"Section 2. Every person of the age of eighteen (18) years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and, except as hereinafter provided, upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States; second, he shall have resided in this state thirty (30) days immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law. Provided that no person convicted of felony shall have the right to vote unless he has been pardoned or restored to citizenship by the governor."

Cross-References

Electors' qualifications in election on school district levy, debt or liability, sec. 75-6410.1.

Operation and Effect

This section, in adding the property holding qualification to voting on debts or liabilities, confined the additional qualification to only those debts or liabilities which look to ad valorem taxes for their retire-

ment. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 915.

This section amended the words "debt or liability" as they appear in section 2, article XIII of the Montana Constitution, and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 916.

Racial Discrimination Prohibited

Congress is empowered, as it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa, to prohibit use of literacy tests or other devices used to discriminate against voters on account of their race in all state and national elections. *United States v. Arizona*, — US —, — L Ed 2d —, 91 S Ct 260.

Residence

As it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa-1, Congress can prohibit states from disqualifying voters in elections for presidential and vice-presidential electors because they have not met state residency requirements, and can set residency requirements and provide for absentee balloting in presidential and vice-presidential elections. *United States v. Arizona*, — US —, — L Ed 2d —, 91 S Ct 260.

Voting Age.

Provisions of the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973bb-1, setting minimum voting age at 18 are constitutional and enforceable in so far as they pertain to federal elections but are unconstitutional and unenforceable in so far as they pertain to state and local elections. *United States v. Arizona*, — US —, — L Ed 2d —, 91 S Ct 260.

ARTICLE X—STATE INSTITUTIONS AND PUBLIC BUILDINGS

Sec. 3.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 5.

Indigent Support

Under constitutional provision defining indigency and statute imposing duty upon county to pay for medical aid rendered indigents, fact that supposed indigent had never supported herself and apparently never would was proof of medical indigency in spite of fact she was employable and notwithstanding absence of evidence

of reasons for her inability to be productive citizen. *Montana Deaconess Hospital v. Lewis and Clark County*, 149 M 206, 425 P 2d 316.

Unreasonable Standard

Where family of ten had earnings in excess of county welfare board's standard minimum income for determining indi-

gency, application of the standard to deny medical assistance became unreasonable where the family had considerable medical

expense and a history of indebtedness. *Saint Patrick Hospital v. Powell County*, — M —, 477 P 2d 340.

ARTICLE XI—EDUCATION

Sec. 1.

References

Cited in *State ex rel. Ronish v. School*

Dist. No. 1, 136 M 453, 348 P 2d 797, 800, 78 ALR 2d 1012.

Sec. 2.

Unclaimed Shares and Dividends

Where corporation was voluntarily dissolved, unclaimed shares and their pro-rata share of unpaid dividends would become abandoned property and subject to

escheat to state two years after final distribution of assets. *Barnes-King Development Co. v. Corette*, — M —, 478 P 2d 868.

Sec. 4.

Cross-References

Board as head of department of state lands, sec. 82A-1101.

Board functions retained after reorganization, secs. 82A-1103, 82A-1505(3).

Sec. 7.

Operation and Effect

The use of the term "all" is not to be taken in its universal and omnibus sense; rather, it was meant to be limited and qualified to conform to good reason to carry out the other purposes of the constitution such as to have a general, uniform and thorough system of public schools. *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

A reasonable interpretation of constitutional and statutory provisions specifying that school shall be open to children be-

tween the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year, after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are not yet 6 years of age and each school district may establish a "cut-off" date governing entry into the first grade. *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

Sec. 8.

Parochial Schools

This section prohibits public school board from either making a levy for or expending funds for employment of teach-

ers to teach secular subjects in parochial schools. *State ex rel. Chambers v. School District No. 10 of County of Deer Lodge*, — M —, 472 P 2d 1013.

Sec. 11.

Cross-References

Board as head of department of education, sec. 82A-501.

Delegation of Powers

The legislature in sections 75-107 and 75-403 R. C. M. 1947, has restricted the

board of education in delegation of its powers and this precludes college officials from contracting with teachers and instructors on behalf of the board. *Brown v. State Board of Education*, 142 M 547, 385 P 2d 643.

Sec. 12.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

ARTICLE XII—REVENUE AND TAXATION

Sec. 1.

Construction with Other Sections

This section and section 11 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

License Tax—Purposes for Which License Tax May Be Levied

It was not the intention in authorizing the legislature to impose a license fee, to differentiate between the license tax, so-called, and the license fee extracted in regulatory matters, but rather to refer the general subject of licenses to the legislature. *Montana Milk Control Board v. Maier*, 140 M 38, 367 P 2d 305, 306.

Sec. 1a.

Income Tax

The provisions of section 84-4905, before the 1955 amendment, relating to adjusted gross income, did not violate this section. *State ex rel. Anderson v. State Board of Equalization*, 133 M 8, 319 P 2d 221, 228.

This section does not impose an affirmative duty to replace property taxes entirely

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax, was unconstitutional under this section. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Statutes Violating This Provision

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees, was invalid under this section since, by imposing a one per cent tax on gross receipts rather than on profits, it was arbitrary and unreasonably discriminatory. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

with income taxes. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

The mere fact that the income-tax law does not operate simultaneously upon the incomes of persons, firms, and corporations does not make it invalid. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

Sec. 1b.

Gasoline Tax Revenues

Deposit of one per cent of gasoline tax revenues into state park fund as provided by statute did not violate antidiversion amendment of constitution in the absence of proof that legislative finding that not less than one per cent of all gasoline sold in state is consumed by motorboats is erroneous and in absence of proof that all motor fuel taxes resulting from use of vehicles on public highways are not expended on public highways. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

Sec. 2.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farming, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Proper Use of Funds

Use, by state, of state highway trust funds derived essentially from motor vehicle license fees and gasoline taxes to pay assessment levied against property owned or leased by state highway commission and located within flood control and drainage district was proper and such use did not violate this section. *State Highway Commission v. West Great Falls Flood Control & Drainage Dist.*, — M —, 468 P 2d 753.

Educational Purposes

Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

The term "educational purposes," as used in this section and section 84-202, exempting property used exclusively for

"educational purposes" from taxation, is not defined in terms of common scholastic institutions of grammar school, high school and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

"Exclusive Use" Defined

The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Exemption of Church Camp

Where church summer camp, containing twenty-two acres of land and twenty-eight improvements, was "used exclusively for educational purposes" within the meaning of this section and section 84-202, it was exempt from taxation. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Extent of Exemption

When exempting an institution of charity, sufficient residence and recreation area may also be exempt. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Home for Aged Persons

Nonprofit foundation operating home for aged was entitled to tax exemption under statute granting a tax exemption to institutions of purely public charity, notwithstanding evidence that the foundation charged fees, imposed admission require-

ments and maintained a high standard of care, and notwithstanding argument that 1965 amendment to statute, specifically including homes for aged, was unlawful attempt by legislature to expand exemption allowed by constitution. *Bozeman Deaconess Foundation v. Ford*, 151 M 143, 439 P 2d 915.

Limits of Public Charity

An institution of purely public charity, which is exempt from taxation under this section and section 84-202, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax for nonpublic purpose, was unconstitutional under this section. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Trust Property

Provision under section 11-4108 for taxing property in which county or municipality has only a trust interest as opposed to a beneficial interest does not violate this section, since taxation of property is based on its use. *Fickes v. Missoula County*, — M —, 470 P 2d 287.

Sec. 3.

Adverse Possession

One in actual possession of surface land, who owned it in fee simple and paid taxes upon it for over thirty years, could not acquire an undivided one-fourth mineral interest, reserved in a deed and thereby severed entirely from the land, by adverse possession, where the minerals were not and could not be assessed separately for taxation under this section. *Johnson v. Unknown Heirs*, 140 M 128, 368 P 2d 577, 581.

Annual Net Proceeds Tax

"Average of annual net proceeds" as provided by section 84-5408, as amended

in 1959, is not the same as the "annual net proceeds" provided by this section and therefore the law is unconstitutional. *State ex rel. Roberts v. State Board of Equalization*, 138 M 138, 355 P 2d 150, 152.

"Mining Claim"

A "mining claim" is not restricted to a single mining location but may include as many locations as a miner can purchase, and the ground covered by all will constitute a mining claim. *United States Gypsum Co. v. Schreiner*, 135 M 312, 340 P 2d 548.

Sec. 7.

"Owned or Used"

Property in which county has trust in-

terest, but corporation has the use, will be taxed to corporation and not be ex-

empted as county property under Montana constitution, article XII, section 2.

Fickes v. Missoula County, — M —, 470 P 2d 287.

Sec. 11.

Classification of Property

Assessment of plaintiff's property based on "market value" rather than upon use of property for agricultural purposes did not violate this section since evidence showed that such property was located within commercial area and its market value far exceeded its value for agricultural purposes. *Mohland v. State Board of Equalization*, — M —, 466 P 2d 582.

Construction with Other Sections

This section and section 1 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. *Yellowstone Pipe Line Co. v.*

State Board of Equalization, 138 M 603, 358 P 2d 55, 66.

Discriminatory Enforcement

State board of equalization could enforce statute providing for assessment of property brought into state subsequent to regular assessment date as against trucks and used cars without also enforcing it against every other type of retail inventory and without violating uniformity requirement of constitution. *Hardin Auto Co. v. Alley*, 149 M 1, 422 P 2d 346.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 12.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 920.

Sec. 13.

Cross-References

Printing defined, sec. 19-103.1.

Sec. 14.

Cross-References

Depository board continued, sec. 82A-209.

Sec. 15.

Cross-References

State board as head of department of revenue, sec. 82A-1801.

State board functions continued after reorganization, sec. 82A-1803(1).

Construction with Other Sections

Sections 1 and 11, of article XII of the Montana constitution must be construed together with this section. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

Increased Valuation

State board of equalization's directive to county officials requiring use of certain valuations on grades of farm land for subsequent years, was enforceable by

mandamus since the board had not only powers of adjustment, equalization and supervision over assessors under this section and section 84-708, but also the power to issue directives for those purposes. *State ex rel. State Board of Equalization v. Koch*, 145 M 474, 401 P 2d 765.

Intervention of Court

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

Powers of State Board of Equalization

Board is charged with the duty of adjusting and equalizing the valuation of all

taxable property among the several counties and between individual taxpayers. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

The state board of equalization has the power to determine what a particular class should include. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 67.

Where the board held "show cause hearings" to afford opportunity to protest board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. State Board of Equalization v. Kovich, 142 M 201, 383 P 2d 818.

Uniformity of Taxation

As long as the state board of equalization treats property of similar nature and productivity the same, it cannot be said that the constitutional mandate of uniformity is not subserved. Yellowstone

Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 67.

Under the Montana constitution the state board of equalization has the power, in adjusting and equalizing taxation between oil pipelines and other properties, i.e., town and city lots, to recognize pipelines as a class in itself, and still not violate the requirement of uniformity. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 67.

Writ of Prohibition

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging its constitutional duties. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

References

Cited in Blair v. Potter, 132 M 176, 315 P 2d 177, 182.

Sec. 16.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocation

of utility facilities, do not violate this section. Jones v. Burns, 138 M 268, 357 P 2d 22, 33.

ARTICLE XIII—PUBLIC INDEBTEDNESS

Sec. 1.

Industrial Development Revenue Bonds

Provision for issuance of revenue bonds pursuant to Industrial Development Project Act (11-4101—11-4110) does not violate this section, since the credit in aid provided for in that act is for public purpose, despite the fact that certain individuals, associations or corporations may benefit from the legislation. Fickes v. Missoula County, — M —, 470 P 2d 287.

Laws Violating This Provision

An appropriation to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were not under the control of the state, was prohibited by

this section even though the legislation was for a public purpose. Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars, 141 M 500, 379 P 2d 107.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocation of utility facilities, do not violate this section. Jones v. Burns, 138 M 268, 357 P 2d 22, 34.

References

Wilson v. State Highway Commission, 140 M 253, 370 P 2d 486, 487.

Sec. 2.

"Debt or Liability"

Section 2, article IX of the Montana constitution amended the words "debt or liability" as they appear in this section and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. Cottingham v. State

Board of Examiners, 134 M 1, 328 P 2d 907, 916.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums was not required to be submitted to the voters under this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 915, 916.

References

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

Sec. 5.

Industrial Development Revenue Bonds

Industrial Development Project Act (11-4101—11-4110) does not violate this section, since it provides for revenue bonds and does not create debt or liability within the meaning of this section.

Fickes v. Missoula County, — M —, 470 P 2d 287.

References

State ex rel. Keast v. Krieg, 147 M 164, 410 P 2d 710.

Sec. 6. No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

Compiler's Note

This constitutes sec. 6 of article XIII as amended by act approved March 7, 1957 (Ch. 161, Laws of 1957), adopted at the general election of November 1958, effective under governor's proclamation, December 8, 1958. This amendment inserted the words "high school district" each time they appear and inserted the phrase "and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section."

Combined Bond Issue

Bonds issued pursuant to a plan authorizing high school district and common school district included therein to build grade school and high school in one

compact unit sharing common facilities was not an attempt to circumvent debt limits imposed on the districts by the constitution. *Long v. School District No. 44*, 149 M 220, 425 P 2d 822.

Lease Payments

Under resolution providing that city would convey title to properties to party who would cause to be built on one property a city approved building which the city would rent for an annual rental for a period of three years with option in the city to purchase property together with the building thereon, lease payments were forms of indebtedness within the meaning of this section. *State ex rel. Simmons v. City of Missoula*, 144 M 210, 395 P 2d 249, 251.

ARTICLE XV—CORPORATIONS OTHER THAN MUNICIPAL

Sec. 4.

Operation and Effect

A corporation may not deprive a stockholder of the right of cumulative voting by any act on its part. *Sensabaugh v.*

Polson Plywood Co., 135 M 562, 342 P 2d 1064.

Stockholders may contract among themselves with respect to voting their stock

and a contract to refrain from cumulative voting is valid. However, an invalid bylaw, attempting to dispense with cumulative voting, was not enforceable as a

contract, even among those stockholders assenting to it. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Sec. 9.

Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, R. C. M. 1947, that a portion of platted subdivisions be dedicated to public park purposes is not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

Operation and Effect

Under the guise of police power the state and municipal subdivisions thereof have the power and the duty to do all things necessary to protect the public in matters of the preservation, among other things of the health and well being of the community. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 30.

Under police power the state can provide for the destruction of diseased animals even though provision for compensation to the owner has not been made. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sec. 13.

Lease of State Lands

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. *State ex rel. Hughes v. State Board of Land Comms.*, 137 M 510, 353 P 2d 331, 336.

References

State ex rel. Johnson v. District Court of Fourth Judicial District, 148 M 22, 417 P 2d 109, 112.

Sec. 20.

Fair Trade Act

The Fair Trade Act (now repealed) permitted price-fixing in violation of this section and was therefore invalid. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644, distinguished in 141 M 149, 159, 376 P 2d 508.

Operation and Effect

The activity proscribed by this section has no relation to police power. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

Price-Fixing

This section is not only aimed at monopolies but also invalidates all price-fixing contracts, even in situations where there is open competition and no danger of monopoly. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644.

References

Cited in Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F Supp 274, 279; *McNussen v. Graybeal*, 146 M 173, 405 P 2d 447.

ARTICLE XVI—COUNTIES—MUNICIPAL CORPORATIONS AND OFFICES

Sec. 2.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 4.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 5.

References

Husky Hi Power, Inc. v. Schmidt, 140 M 353, 372 P 2d 142, 144.

Sec. 6.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 7.

City-County Government

A city-county planning board established without reference to the electors

was in violation of this section. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

ARTICLE XVII—PUBLIC LANDS

Sec. 1.

Leasing for Underground Storage

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. *State ex rel. Hughes v. State Board of Land Commrs.*, 137 M 510, 353 P 2d 331, 335.

leases in the particular community, coupled with the applicant's ability as a farmer and other variables to be considered by the state in securing as large a return as possible on the land, while preserving its productive capacity. *State ex rel. Thompson v. Babcock*, 147 M 46, 409 P 2d 808.

Market Value

The test of "willing buyer-willing seller" has little applicability in awarding a lease to farm land by the state. A more appropriate test is the value of similar

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 2.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 3.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

ARTICLE XVIII—LABOR

Sec. 1.

Cross-References

Commissioner continued as head of department, sec. 82A-1001.

Commissioner of agriculture continued as head of department, sec. 82A-301.

Commissioner of agriculture functions transferred to department, sec. 82A-303 (3).

ARTICLE XIX—MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

Sec. 2.

Initiative Measure Unconstitutional

Proposed initiative measure no. 63 which would legalize lotteries and repeal sections 94-3001 to 94-3011 is unconstitutional. *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 763.

Operation and Effect

The framers of the constitution were seeking to suppress and restrain the spirit of gambling which is cultivated and stimulated by schemes whereby one is induced to hazard his earnings with the hope of

large winnings. The statutes which define and prohibit lotteries must therefore be interpreted with this purpose in mind. *State v. Cox*, 136 M 507, 349 P 2d 104, 106.

The provisions of this section are both mandatory and prohibitory. *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 763.

Sec. 6.

Cross-References

Section 46, Article V would permit

Sec. 8.

Referred Measure

Laws 1969, ch. 65 submitted to electors the question whether a constitution convention should be called. The act read:

"Section 1. At the general election to be held in November 1970 there shall be submitted to the electors of the state of Montana the question whether the legislative assembly at the 1971 session, and in accordance with article XIX, section 8 of the Montana constitution, shall call a convention to revise, alter, or amend the constitution of Montana."

The measure was approved by the voters at the general election of November 3, 1970.

Constitutional Convention [Chapter 296, Laws 1971; Chapter 1, Ex. Laws 1971]

Chapter 296, Laws of 1971, as amended by ch. 1, Ex. Laws of 1971, provided for a constitutional convention to meet in 1971 and 1972, to submit proposals to the electorate not more than six months after adjournment of the convention. The act, as amended, read:

Section 1. A constitutional convention to propose revisions, alterations, or amendments to the constitution of the state of Montana is hereby called.

Section 2. The number of members of the convention and the districts from which they are elected shall be the same as that provided for the election of members of the house of representatives of the Montana legislative assembly at the general election to be held November 7, 1972.

Section 3. The qualifications of members shall be the same as that of members of the senate of the Montana legislative assembly as provided in article V, section 3 of the constitution of the state of Montana: "No person shall be a senator who shall not have attained the age of twenty-four (24) years, and who shall not be a citizen of the United States and who

Valuable Consideration

Where one is required to make an outlay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. *State v. Cox*, 136 M 507, 349 P 2d 104. (*State ex rel. Stafford v. Fox-Great Falls Theatre Corp.*, 114 M 52, 132 P 2d 689, distinguished.)

deviation from this section under emergency conditions.

shall not (for at least twelve (12) months next preceding his election) have resided within the county or district in which he shall be elected."

Section 4. (1) Delegates to the constitutional convention shall be elected in the same manner as members of the house of representatives, except the special primary election shall be held September 14, 1971 and the special general election shall be held November 2, 1971.

(2) Thirty (30) days or more before the special general election, the secretary of state shall certify to the registrars the name and description of each person nominated, as specified on the certificate of nomination filed with him.

Section 5. Each member, before entering upon his duties, shall take and subscribe the following oath or affirmation prescribed by section 1 of article XIX of the constitution of the state of Montana: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to my office other than the compensation allowed by law, so help me God."

Section 6. Vacancies occurring in the convention shall be filled in the manner

provided for filling vacancies in the legislative assembly as provided in sections 43-215 and 43-216, R. C. M. 1947:

"43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting. When a vacancy occurs in either house of the legislative assembly, the vacancy shall be filled by appointment by the board of county commissioners, or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board. The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislative assembly, and he shall act as the presiding officer of the meeting."

"43-216. Alternative method of selection—failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from a number of candidates, not exceeding the number of counties comprising the district, in accordance with rules of selection adopted by the appointing board."

Section 7. (1) It shall be the duty of the delegates elected to assemble in the chambers of the house of representatives in the state capitol building in the city of Helena at 10:00 a.m. on November 29, 1971, for an organizational meeting of no longer than three (3) days duration.

(2) This meeting shall be for the purpose of electing permanent convention officers, adopting rules of procedure, and providing for such interim committees and staff members as may be necessary to prepare for the plenary meeting of the convention.

(3) Until the convention has adopted rules of procedure, "Mason's Manual of Legislative Procedure" shall govern the procedure of the convention. A majority of the whole number of delegates to the convention shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day. The convention may compel the attendance of its members.

(4) The governor shall call the first meeting of the constitutional convention to order and shall preside until a temporary president is elected. The governor shall:

(a) call the roll of the members-elect, (as shown by the official election returns on file in the office of the secretary of state);

(b) cause the oath called for by this

act to be administered to those members-elect who are present;

(c) call for nominations of convention members for the office of temporary president;

(d) cause the roll of members to be called for the purpose of voting for temporary president, and

(e) declare to be elected the person receiving a plurality of the votes cast for the office of temporary president.

(5) The temporary president shall then assume the duties of the presiding officer, and the convention shall proceed to the election of a president from within its membership in like manner as the temporary president was elected except that a majority of the votes cast is required to elect the president of the convention. The convention shall then proceed to elect one of its members as vice-president of the convention to preside in the absence of the president.

(6) It shall be the duty of the delegates elected to assemble in plenary session in the chambers of the house of representatives in the state capitol building in the city of Helena at 10:00 a.m. on January 17, 1972. The convention, which may recess from time to time, shall then remain in session as long as necessary.

Section 8. In going to and returning from the convention and during its sessions, the members shall in all cases, except treason, felony or breach of the peace, be privileged from arrest; and they shall not be questioned in any other place for any speech or debate in the convention.

Section 9. The convention may select and employ such employees as it may deem necessary to the efficient conduct of its business, each of whom shall receive such compensation as may be fixed by the convention. The convention may make such other expenditures as it deems proper to carry out its work, but shall not authorize total expenditures in excess of the amount appropriated by law for its expenses.

Section 10. (1) The convention shall determine the rules of its procedure, and be the judge of the election, returns and qualifications of its members. The convention shall keep a verbatim journal of its proceedings and a transcript of its debates. Each committee of the convention shall keep a record of its proceedings and reports. The convention may also provide for the publication of any of its other documents and reports.

(2) The verbatim journal of its proceedings, the transcript of the debates of the convention, and the committee reports and proceedings shall be filed in the office of the secretary of state.

Section 11. (1) It shall be the duty of all public officers and employees to furnish the convention with any and all statements, papers, books, records and public documents that the convention requires on request of the convention or its committees, and appear before the convention or any committee thereof. The convention, and its committees, may compel the attendance and testimony of witnesses and the production of books, records and documents. Oaths may be administered by the president or any other officer of the convention. Subpoenas and subpoenas duces tecum may be issued over the signature of the president or any other officer of the convention, and may be served by any adult person designated by the issuing officer.

(2) Any district court judge, upon application of the convention, may compel the attendance of witnesses, the production of books, records or documents, and the giving of testimony before the convention by an attachment for contempt or otherwise in the same manner as production of evidence, not privileged by law, may be compelled before the court.

Section 12. (1) The convention may use the facilities of the state, municipal or county government when such use is not disruptive of regular governmental activities.

(2) State, municipal and county officers and employees, at the request of the convention and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the constitutional convention. If leave with pay is granted they shall receive no other compensation, except mileage and per diem, from the convention.

Section 13. The convention may also prepare a schedule of proposed legislation for submission to the 1973 legislative assembly that will complement the proposed revisions, alterations or amendments.

Section 14. The convention shall prepare a schedule of transitional provisions and fix the date or dates upon which revisions, alterations or amendments, if adopted by the voters, take effect.

Section 15. (1) Sections 43-801 to 43-808, R. C. M. 1947, providing for the licensing of legislative lobbyists shall apply to lobbying at the constitutional convention.

(2) Licensed lobbyists shall file with the secretary of state a report on February 1, 1972; February 15, 1972; March 1, 1972; March 15, 1972; April 1, 1972; June 15, 1972. The report, under oath, must include all expenditures made by him relative to promoting or opposing constitutional provisions. On the fifth day a re-

port is delinquent, the secretary of state shall suspend the license of any licensed lobbyist who fails to file a report until such report is filed. The suspension shall be entered on the docket, and the president of the convention notified.

(3) Reports must be filed even though no expenditure may have been made.

(4) Reports need not include:

(a) reasonable internal expenditures such as office expenses, mailing and routine research, and

(b) reasonable expenditures for his personal food, lodging and travel.

(5) Expenditures of twenty-five dollars (\$25) or less may be reported in total amounts rather than in detail.

(6) A lobbyist who terminates his duties shall give the secretary of state, within thirty (30) days after the date of such termination, written notice and shall include a report of his expenditures covering the period of time since his last report. Such reports shall be final.

(7) The secretary of state shall provide forms and shall keep such reports on file for three (3) years. All records are to be open to the public.

(8) Failure to file reports or the filing of incomplete information is a violation of section 43-808, R. C. M. 1947.

Section 16. (1) For each day of the organizational, plenary and signing sessions of the convention, members of the convention shall be paid the same per diem, and expenses as provided in section 43-310, R. C. M. 1947, for members of the legislative assembly.

(2) The president and vice-president of the convention shall be paid the same per diem, and expenses as the president of the senate and speaker of the house of representatives as provided in section 43-311, R. C. M. 1947.

(3) Members and officers shall be entitled to mileage for three (3) trips to and from their residences and Helena by the nearest traveled route at the rate provided for the legislative assembly in section 43-310, R. C. M. 1947.

(4) Officers and employees of the state and its political subdivisions who are not prohibited by the Montana constitution or laws of Montana from serving as delegates and who are elected and serve as delegates to the convention shall have leave, without pay, from their employment during the time the convention is in session, and they shall be entitled to the per diem, expenses and mileage for delegates as provided in this section.

Section 17. (1) The revision or alteration of, or the amendments to the constitution, adopted by the convention, shall be submitted to the electors of this state for ratification or rejection, at an election

appointed by the convention for that purpose, not less than two (2) months nor more than six (6) months after the adjournment of the convention.

(2) The convention may submit proposals to the electorate for ratification in any of the following forms:

(a) submitted as a unit in the form of a new constitution;

(b) submitted as a unit with the exception of separate proposals to be voted upon individually, or

(c) submitted in the form of a series of separate amendments.

(3) The proposals adopted by the convention shall be certified by the president and secretary of the convention to the secretary of state.

(4) Each proposed revision, alteration, or amendment, together with appropriate information explaining each revision, alteration, or amendment, shall be published in full and disseminated to the electors upon adjournment of the convention but not later than thirty (30) days preceding the election and in such manner as the convention prescribes.

(5) The convention shall also publish a report to the people explaining its proposals.

(6) Notice of the election shall be given in the manner and form prescribed by the convention.

(7) The convention shall prescribe the manner and form of voting at such election.

(8) The votes cast at such election shall be tabulated, returned and canvassed in such manner as may be directed by the convention.

(9) If a majority of the electors voting at the special election shall vote for the proposals of the convention the governor shall by his proclamation declare the proposals to have been adopted by the people of Montana. The new constitutional provisions shall take effect as provided therein, or as provided in a schedule of transitional provisions attached thereto.

(10) The election laws of the state of Montana shall apply in all other respects to the election conducted under this section.

Section 18. Every person who, at the time of holding of the elections provided for in this act, is a qualified voter under the constitution and laws of this state shall be entitled to vote in such election.

Section 19. All state and local officials shall do all those things which are appropriate to the holding of each of the special elections provided for in this act and which are required under the general election laws.

Section 20. (1) A temporary state agency known as the Montana constitutional

convention commission consisting of sixteen (16) members is hereby created to prepare for the constitutional convention. Legislators whose terms of office have not expired shall not be appointed to the commission. Members of the commission shall be appointed for a term ending upon sine die adjournment of the constitutional convention, consideration being given to geographic, economic, and other pertinent factors as follows:

(a) four (4) members appointed by the speaker of the house of representatives, no more than two (2) of whom shall be affiliated with the same political party;

(b) four (4) members appointed by the committee on committees of the senate, no more than two (2) of whom shall be affiliated with the same political party;

(c) four (4) members appointed by the governor, no more than two (2) of whom shall be affiliated with the same political party;

(d) four (4) members appointed by the supreme court, no more than two (2) of whom shall be affiliated with the same political party.

(2) Commission members shall be reimbursed for actual and necessary expenses incurred as commission members.

(3) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments, except when the legislature is not in session a vacancy among members appointed by the speaker of the house and the committee on committees of the senate may be filled by selection of another member by the remaining members of commission.

(4) The commission shall select from its membership a chairman and any other officers it considers necessary.

(5) The commission may employ and fix the compensation and duties of necessary staff.

(6) State, municipal and county officers and employees, at the request of the commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the constitutional convention commission. If leave with pay is granted they shall receive no other compensation, except mileage and per diem, from the commission.

(7) It shall be the duty of the commission, in order to prepare for the constitutional convention: to undertake studies and research; to compile, prepare and assemble essential information for the delegates, without any recommendation.

(8) The chairman shall schedule meetings of the commission as deemed necessary. The chairman shall give due notice of the time and place of the meetings to members of the commission. The director shall report at each meeting.

(9) The commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the commission during regular office hours.

(10) Upon request, state agencies shall co-operate with the commission by furnishing assistance and data to the extent possible.

(11) The commission may accept and expend any federal funds which may be available for support of the preparatory study.

(12) The commission shall report its findings and any recommendations it considers necessary to the convention and transfer its files to the constitutional convention within ten (10) days after the constitutional convention has convened.

Section 21. (1) The following amount is appropriated from the general fund to the constitutional convention commission:

For the period ending February 1, 1972 -----\$149,540

Any amount unexpended from this appropriation on February 1, 1972 is appropriated to the constitutional convention for the biennium ending June 30, 1973.

(2) The following amount is appropriated from the federal and private revenue fund to the constitutional convention commission:

For the period ending February 1, 1972 -----\$146,461

Any amount unexpended from this appropriation on February 1, 1972 is appropriated to the constitutional convention for the biennium ending June 30, 1973.

(3) The following amount is appropriated from the general fund to the constitutional convention:

For the biennium ending June 30, 1973 -----\$499,281

(4) The following amount is appropriated from the general fund to the secretary of state for the elections relating to the constitutional convention:

For the biennium ending June 30, 1973 -----\$41,000

Section 22. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

Section 23. This act is effective on its passage and approval.

Section 24. This act is repealed effective June 30, 1973."

Title of Act

An act to provide for a constitutional convention; making appropriations in connection therewith; providing for an immediate effective date; and further providing for an automatic repealer.

Effective Date

Section 5 of Ch. 53, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

Delegates to Convention

Legislators and other officers of the state are ineligible to serve as delegates to a constitutional convention during their term of office. Forty-Second Legislative Assembly v. Lennon, — M —, 481 P 2d 330.

Delegates to the constitutional convention must be elected in the same manner as legislators, including the provisions for partisan elections. Forty-Second Legislative Assembly v. Lennon, — M —, 481 P 2d 330.

Delegates to the constitutional convention must be elected from districts apportioned according to the 1970 census and to be used for the election of legislators in 1972. Forty-Second Legislative Assembly v. Lennon, — M —, 481 P 2d 330.

Initiative Measure

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 9, article XIX. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

Sec. 9. Amendments to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval

or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one (1) be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately. Not more than three amendments to this constitution shall be submitted at the same election, except that there may be submitted at each of the general elections held in the years 1972, 1974 and 1976, in addition to the three amendments otherwise authorized by this section, an amendment or amendments providing for the reorganization of the executive department of government which may include the revision or repeal of sections of this constitution relating to any boards, offices, and departments other than legislative and judicial offices. The reorganization of the executive department is a single subject, and an additional amendment relating to that subject authorized by this section may be submitted to the qualified electors of the state in the form of a title clearly expressing its subject.

Compiler's Notes

This constitutes sec. 9 of article XIX as amended by act approved February 21, 1969 (Ch. 66, Laws 1969), adopted at the general election of November 3, 1970, and effective under the governor's proclamation of November 20, 1970. The amendment added to the next to last sentence the exceptions applicable to the elections of 1972, 1974 and 1976, and it added the last sentence to the section.

Cross-Reference

Explanatory statement of proposed Constitutional amendments to be prepared by attorney general, sec. 37-104.1.

Initiative Measure

Proposed initiative measure no. 63,

which would legalize lotteries and repeal sections 94-3001 to 94-3011, being unconstitutional, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 8, article XIX. *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 764.

Presentation to Governor

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

ARTICLE XXI—MONTANA TRUST AND LEGACY FUND

Sec. 1.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 6.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 7.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 17.

Sale of Securities

The securities which constitute these funds may be sold before maturity for the benefit of the funds and the state institutions for which they were created, and

may even be sold for less than face value provided that the sale price is not less than the purchase price. In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

TABLE OF CORRESPONDING CODE SECTIONS

Revised Codes 1921 and 1935 to Revised Codes 1947

This table shows the disposition made of the sections of the Revised Codes of 1921 and the Revised Codes of 1935 since publication of Replacement Volume 1.

1921 & 1935	1947	1921 & 1935	1947
42, 43	Rep. Ch. 194, Sec. 13, L. 1967	349.1	Rep. Ch. 158, Sec. 7, L. 1967
45	Rep. Ch. 194, Sec. 13, L. 1967	349.54—349.62	Rep. Ch. 19, Sec. 10, L. 1967
47	Rep. Ch. 194, Sec. 13, L. 1967		
48	Unconstitutional, 246 F Supp 396	349.65	Rep. Ch. 147, Sec. 242, L. 1963
53, 54	Rep. Ch. 194, Sec. 13, L. 1967	368	Rep. Ch. 129, Sec. 1, L. 1963
56	Rep. Ch. 18, Sec. 4, L. 1969	376	Rep. Ch. 177, Sec. 51, L. 1965
61-64	Rep. Ch. 1, Sec. 4, L. 1965	380-383	Rep. Ch. 305, Sec. 2, L. 1967
66, 67	Rep. Ch. 1, Sec. 4, L. 1965	391	Rep. Ch. 264, Sec. 10-102, L. 1963
69-73	Rep. Ch. 1, Sec. 4, L. 1965	437, 438	Rep. Ch. 202, Sec. 3, L. 1959
76-78.3	Rep. Ch. 1, Sec. 4, L. 1965	440	Rep. Ch. 202, Sec. 3, L. 1959
137	Rep. Ch. 80, Sec. 14, L. 1961	464-465	Rep. Ch. 177, Sec. 51, L. 1965
145.1-145.7	Rep. Ch. 300, Sec. 143, L. 1967	466, 467	Rep. Ch. 68, Sec. 10, L. 1967
		469-470	Rep. Ch. 177, Sec. 51, L. 1965
148	Rep. Ch. 177, Sec. 51, L. 1965	471	Rep. Ch. 68, Sec. 10, L. 1967
153	Rep. Ch. 147, Sec. 242, L. 1963	508	Rep. Ch. 68, Sec. 10, L. 1967
157	Rep. Ch. 94, Sec. 5, L. 1969	519-521	Rep. Ch. 80, Sec. 14, L. 1961
179	Rep. Ch. 147, Sec. 242, L. 1963	531-536	Rep. Ch. 368, Sec. 248, L. 1969
182.1	Rep. Ch. 205, Sec. 2, L. 1971	537.1-551	Rep. Ch. 368, Sec. 248, L. 1969
183	Rep. Ch. 152, Sec. 3, L. 1971	553-562	Rep. Ch. 368, Sec. 248, L. 1969
185	Rep. Ch. 152, Sec. 3, L. 1971	566-598	Rep. Ch. 368, Sec. 248, L. 1969
187.1-187.3	Rep. Ch. 152, Sec. 3, L. 1971	600-641	Rep. Ch. 368, Sec. 248, L. 1969
188	Rep. Ch. 177, Sec. 51, L. 1965	644-652	Rep. Ch. 368, Sec. 248, L. 1969
189	Rep. Ch. 152, Sec. 3, L. 1971	654-662	Rep. Ch. 368, Sec. 248, L. 1969
188	Rep. Ch. 177, Sec. 51, L. 1965	663	Rep. Ch. 156, Sec. 11, L. 1965
198.1-198.8	Rep. Ch. 147, Sec. 242, L. 1963	666	Rep. Ch. 156, Sec. 11, L. 1965
		665-670	Rep. Ch. 368, Sec. 248, L. 1969
201	Rep. Ch. 177, Sec. 51, L. 1965	673.1	Rep. Ch. 368, Sec. 248, L. 1969
202	Rep. Ch. 129, Sec. 1, L. 1963	673.2	Rep. Ch. 156, Sec. 11, L. 1965
204, 205	Rep. Ch. 129, Sec. 1, L. 1963	673.6-673.7	Rep. Ch. 156, Sec. 11, L. 1965
219	Rep. Ch. 129, Sec. 1, L. 1963	673.8	Rep. Ch. 368, Sec. 248, L. 1969
223	Rep. Ch. 177, Sec. 51, L. 1965	677-681	Rep. Ch. 368, Sec. 248, L. 1969
238-241	Rep. Ch. 97, Sec. 32, L. 1961	683-735	Rep. Ch. 368, Sec. 248, L. 1969
249	Rep. Ch. 97, Sec. 32, L. 1961	757-782	Rep. Ch. 368, Sec. 248, L. 1969
251-253	Rep. Ch. 80, Sec. 14, L. 1961	784-797	Rep. Ch. 368, Sec. 248, L. 1969
254	Rep. Ch. 271, Sec. 33, L. 1963	798-800	Rep. Ch. 194, Sec. 13, L. 1967
255-259	Rep. Ch. 80, Sec. 14, L. 1961	801-812.11	Rep. Ch. 368, Sec. 248, L. 1969
259.2	Rep. Ch. 271, Sec. 33, L. 1963	812.13	Rep. Ch. 368, Sec. 248, L. 1969
259.4	Rep. Ch. 271, Sec. 33, L. 1963	812.14	Rep. Ch. 20, Sec. 3, L. 1959
263-266	Rep. Ch. 80, Sec. 14, L. 1961	812.15	Rep. Ch. 368, Sec. 248, L. 1969
268, 269	Rep. Ch. 80, Sec. 14, L. 1961	813-828.7	Rep. Ch. 368, Sec. 248, L. 1969
274	Rep. Ch. 80, Sec. 14, L. 1961	829-829.11	Rep. Ch. 368, Sec. 248, L. 1969
290	Rep. Ch. 177, Sec. 51, L. 1965	830-835	Rep. Ch. 5, Sec. 496, L. 1971
295-298	Rep. Ch. 158, Sec. 11, L. 1959	836	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971
301	Rep. Ch. 147, Sec. 242, L. 1963		
303	Rep. Ch. 158, Sec. 11, L. 1959	852, 852.1	Rep. Ch. 2, Sec. 63, L. 1971
306	Rep. Ch. 81, Sec. 3, L. 1961	853-859	Rep. Ch. 2, Sec. 63, L. 1971
310-315	Rep. Ch. 271, Sec. 33, L. 1963	860	Rep. Ch. 127, Sec. 1, L. 1967; Ch. 2, Sec. 63, L. 1971
317-319	Rep. Ch. 271, Sec. 33, L. 1963		

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1921 & 1935	1947	1921 & 1935	1947
861-869	Rep. Ch. 2, Sec. 63, L. 1971	1262.1	Rep. Ch. 5, Sec. 496, L. 1971
872-912	Rep. Ch. 2, Sec. 63, L. 1971	1262.3-1262.13	Rep. Ch. 5, Sec. 496, L. 1971
913-916	Rep. Ch. 75, Sec. 5, L. 1967	1262.15-1262.17	Rep. Ch. 5, Sec. 496, L. 1971
917-923	Rep. Ch. 2, Sec. 63, L. 1971	1262.19-1262.43	Rep. Ch. 5, Sec. 496, L. 1971
926-929	Rep. Ch. 2, Sec. 63, L. 1971	1262.52-1262.79	Rep. Ch. 5, Sec. 496, L. 1971
930	81-1007.1	1262.81	Rep. Ch. 5, Sec. 496, L. 1971
930.1-930.4	Rep. Ch. 2, Sec. 63, L. 1971	1262.83-1262.94	Rep. Ch. 5, Sec. 496, L. 1971
931-938	Rep. Ch. 5, Sec. 496, L. 1971	1262.96-1262.100	Rep. Ch. 5, Sec. 496, L. 1971
940	Rep. Ch. 93, Sec. 44, L. 1969	1263.1-1263.7	Rep. Ch. 5, Sec. 496, L. 1971
941-943	Rep. Ch. 5, Sec. 496, L. 1971	1263.9, 1263.10	Rep. Ch. 5, Sec. 496, L. 1971
945, 946	Rep. Ch. 5, Sec. 496, L. 1971	1263.12-1263.18	Rep. Ch. 5, Sec. 496, L. 1971
948	Rep. Ch. 5, Sec. 496, L. 1971	1263.20-1263.26	Rep. Ch. 5, Sec. 496, L. 1971
950-958	Rep. Ch. 5, Sec. 496, L. 1971	1263.28, 1263.29	Rep. Ch. 5, Sec. 496, L. 1971
960-971.1	Rep. Ch. 5, Sec. 496, L. 1971	1263.31	Rep. Ch. 5, Sec. 496, L. 1971
972, 973	Rep. Ch. 5, Sec. 496, L. 1971	1318-1327.1	Rep. Ch. 5, Sec. 496, L. 1971
975-980	Rep. Ch. 5, Sec. 496, L. 1971	1328, 1329	Rep. Ch. 5, Sec. 496, L. 1971
985-1008	Rep. Ch. 5, Sec. 496, L. 1971	1413	Rep. Ch. 199, Sec. 101, L. 1965
1010.1	Rep. Ch. 5, Sec. 496, L. 1971	1414	Rep. Ch. 266, Sec. 82, L. 1963
1011-1015.2	Rep. Ch. 5, Sec. 496, L. 1971	1415	Rep. Ch. 199, Sec. 101, L. 1965
1016-1019	Rep. Ch. 5, Sec. 496, L. 1971	1416, 1417	Rep. Ch. 266, Sec. 82, L. 1963
1019.1-1019.6	Rep. Ch. 5, Sec. 496, L. 1971	1429	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963
1019.8-1019.10	Rep. Ch. 5, Sec. 496, L. 1971	1444	Rep. Ch. 213, Sec. 9, L. 1963
1019.12-1019.26	Rep. Ch. 5, Sec. 496, L. 1971	1445	Rep. Ch. 112, Sec. 15, L. 1963
1020-1029.1	Rep. Ch. 5, Sec. 496, L. 1971	1446	Rep. Ch. 112, Sec. 15 and Ch. 266, Sec. 82, L. 1963
1030, 1031	Rep. Ch. 5, Sec. 496, L. 1971	1447-1450	Rep. Ch. 112, Sec. 15, L. 1963
1034-1036.2	Rep. Ch. 5, Sec. 496, L. 1971	1451, 1452	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963
1037.1-1037.5	Rep. Ch. 5, Sec. 496, L. 1971	1453-1455	Rep. Ch. 112, Sec. 15, L. 1963
1039.1-1039.10	Rep. Ch. 5, Sec. 496, L. 1971	1484-1485	Rep. Ch. 199, Sec. 101, L. 1965
1049-1051.1	Rep. Ch. 5, Sec. 496, L. 1971	1486, 1487	Rep. Ch. 266, Sec. 82, L. 1963
1052-1057	Rep. Ch. 5, Sec. 496, L. 1971	1488	Rep. Ch. 199, Sec. 101, L. 1965
1059-1073	Rep. Ch. 5, Sec. 496, L. 1971	1489-1492	Rep. Ch. 266, Sec. 82, L. 1963
1075-1085	Rep. Ch. 5, Sec. 496, L. 1971	1493-1497	Rep. Ch. 199, Sec. 101, L. 1965
1088	Rep. Ch. 5, Sec. 496, L. 1971	1498-1500	Rep. Ch. 266, Sec. 82, L. 1963
1097	Rep. Ch. 5, Sec. 496, L. 1971	1503-1506	Rep. Ch. 199, Sec. 101, L. 1965
1105-1112	Rep. Ch. 26, Sec. 1, L. 1961	1511	Rep. Ch. 199, Sec. 101, L. 1965
1133-1140	Rep. Ch. 5, Sec. 496, L. 1971	1512-1515	Rep. Ch. 266, Sec. 82, L. 1963
1171, 1172	Rep. Ch. 262, Sec. 16, L. 1969	1516-1517	Rep. Ch. 199, Sec. 101, L. 1965
1173, 1174	Rep. Ch. 5, Sec. 496, L. 1971	1518	Rep. Ch. 266, Sec. 82, L. 1963
1175	Rep. Ch. 366, Sec. 27, L. 1969	1519	Rep. Ch. 199, Sec. 101, L. 1965
1176-1180	Rep. Ch. 5, Sec. 496, L. 1971	1520	Rep. Ch. 189, Sec. 2, L. 1959
1184-1186	Rep. Ch. 5, Sec. 496, L. 1971	1521-1523	Rep. Ch. 213, Sec. 9, L. 1963
1198	Rep. Ch. 5, Sec. 496, L. 1971	1524	Rep. Ch. 266, Sec. 82, L. 1963
1199	Rep. Ch. 79, Sec. 1, L. 1961	1525	Rep. Ch. 199, Sec. 101, L. 1965
1201, 1202	Rep. Ch. 5, Sec. 496, L. 1971	1526	Rep. Ch. 266, Sec. 82, L. 1963
1205	Rep. Ch. 5, Sec. 496, L. 1971	1527-1528	Rep. Ch. 199, Sec. 101, L. 1965
1207-1211	Rep. Ch. 5, Sec. 496, L. 1971	1529-1532	Rep. Ch. 266, Sec. 82, L. 1963
1212	Rep. Ch. 75, Sec. 1, L. 1961	1533	Rep. Ch. 199, Sec. 101, L. 1965
1213-1218.2	Rep. Ch. 5, Sec. 496, L. 1971	1534	Rep. Ch. 266, Sec. 82, L. 1963
1219-1223	Rep. Ch. 5, Sec. 496, L. 1971	1535-1536	Rep. Ch. 199, Sec. 101, L. 1965
1224.1-1224.32	Rep. Ch. 5, Sec. 496, L. 1971	1537	Rep. Ch. 266, Sec. 82, L. 1963
1227	Rep. Ch. 5, Sec. 496, L. 1971		
1231	Rep. Ch. 5, Sec. 496, L. 1971		
1243	Rep. Ch. 5, Sec. 496, L. 1971		
1252, 1253	Rep. Ch. 5, Sec. 496, L. 1971		
1254.1-1254.8	Rep. Ch. 5, Sec. 496, L. 1971		
1255-1261	Rep. Ch. 5, Sec. 496, L. 1971		

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1538	Rep. Ch. 199, Sec. 101, L. 1965	2097-2110	S. Ch. 137, L. 1949
1539, 1540	Rep. Ch. 266, Sec. 82, L. 1963	2265-2267	Rep. Ch. 249, Sec. 23, L. 1967
1541	Rep. Ch. 199, Sec. 101, L. 1965	2381.22	Rep. Ch. 197, Sec. 12-109, L. 1965
1542-1544	Rep. Ch. 266, Sec. 82, L. 1963	2381.23	Rep. Ch. 60, Sec. 1, L. 1969
1545	Rep. Ch. 199, Sec. 101, L. 1965	2396.1	Rep. Ch. 197, Sec. 12-109, L. 1965
1546, 1546.1	Rep. Ch. 266, Sec. 82, L. 1963	2396.3	Rep. Ch. 197, Sec. 12-109, L. 1965
1575.3, 1575.4	Rep. Ch. 215, Sec. 3, L. 1965	2444-2446	Rep. Ch. 197, Sec. 223, L. 1967
1576-1579	Rep. Ch. 190, Sec. 1, L. 1959	2448	Rep. Ch. 197, Sec. 223, L. 1967
1611-1620	Rep. Ch. 197, Sec. 12-109, L. 1965	2450	Rep. Ch. 197, Sec. 223, L. 1967
1622-1632	Rep. Ch. 197, Sec. 12-109, L. 1965	2452-2484	Rep. Ch. 197, Sec. 223, L. 1967
1634-1647	Rep. Ch. 197, Sec. 12-109, L. 1965	2485-2495	Rep. Ch. 18, Sec. 12, L. 1967
1649-1650	Rep. Ch. 197, Sec. 12-109, L. 1965	2497-2502	Rep. Ch. 18, Sec. 12, L. 1967
1676-1682	Rep. Ch. 197, Sec. 12-109, L. 1965	2540, 2541	Rep. Ch. 197, Sec. 223, L. 1967
1684-1701	Rep. Ch. 197, Sec. 12-109, L. 1965	2543-2561	Rep. Ch. 197, Sec. 223, L. 1967
1703-1713	Rep. Ch. 197, Sec. 12-109, L. 1965	2562-2577	Rep. Ch. 107, Sec. 18, L. 1965
1721-1725	Rep. Ch. 197, Sec. 12-109, L. 1965	2578-2582	Rep. Ch. 307, Sec. 27, L. 1967
1727-1735	Rep. Ch. 197, Sec. 12-109, L. 1965	2586-2588	Rep. Ch. 307, Sec. 27, L. 1967
1737-1739	Rep. Ch. 197, Sec. 12-109, L. 1965	2589	Rep. Ch. 122, Sec. 12, L. 1965
1741	Rep. Ch. 197, Sec. 12-109, L. 1965	2591, 2592	Rep. Ch. 307, Sec. 27, L. 1967
1760.1-1760.6	Rep. Ch. 101, Sec. 1, L. 1959	2594-2599	Rep. Ch. 307, Sec. 27, L. 1967
1763.6	Rep. Ch. 256, Sec. 5, L. 1965	2615-2619	Rep. Ch. 197, Sec. 223, L. 1967
1764	Rep. Ch. 197, Sec. 12-109, L. 1965	2641-2657	Rep. Ch. 197, Sec. 223, L. 1967
1783-1792	Rep. Ch. 197, Sec. 12-109, L. 1965	2729	Rep. Ch. 225, Sec. 24, L. 1971
1795-1798	Rep. Ch. 197, Sec. 12-109, L. 1965	2734	Rep. Ch. 225, Sec. 24, L. 1971
1800	Rep. Ch. 197, Sec. 12-109, L. 1965	2738	Rep. Ch. 229, Sec. 14, L. 1967
1805.10	Rep. Ch. 93, Sec. 44, L. 1969	2739, 2740	Rep. Ch. 129, Sec. 1, L. 1963
1805.30	Rep. Ch. 257, Sec. 10, L. 1965	2744	Rep. Ch. 229, Sec. 14, L. 1967
1925, 1926	Rep. Ch. 89, Sec. 4, L. 1961	2757, 2758	Rep. Ch. 229, Sec. 14, L. 1967
1937	Rep. Ch. 184, Sec. 8, L. 1961	2778.5-2778.7	Rep. Ch. 147, Sec. 4, L. 1971
1939	Rep. Ch. 184, Sec. 8, L. 1961	2815.77-2815.86	Rep. Ch. 154, Sec. 17, L. 1965
1949-1953	Rep. Ch. 280, Sec. 22, L. 1965	2815.111	Rep. Ch. 154, Sec. 17, L. 1965
1954	Rep. Ch. 280, Sec. 1, L. 1965	2815.116	Rep. Ch. 154, Sec. 17, L. 1965
1955	Rep. Ch. 280, Sec. 22, L. 1965	2815.119-2815.120	Rep. Ch. 154, Sec. 17, L. 1965
1956	Rep. Ch. 280, Sec. 1, L. 1965	2815.122	Rep. Ch. 154, Sec. 17, L. 1965
1957	Rep. Ch. 280, Sec. 1, L. 1965	2815.156	Rep. Ch. 147, Sec. 242, L. 1963
1958	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963	2821-2822	Rep. Ch. 177, Sec. 51, L. 1965
1959	Rep. Ch. 280, Sec. 1, L. 1965	2921	Rep. Ch. 197, Sec. 1, L. 1959
1960	Rep. Ch. 280, Sec. 22, L. 1965	2963	Rep. Ch. 147, Sec. 242, L. 1963
1961	Rep. Ch. 129, Sec. 1, L. 1963	2994, 2995	Rep. Ch. 233, Sec. 3, L. 1969
1962	Rep. Ch. 280, Sec. 22, L. 1965	3012-3021	Rep. Ch. 341, Sec. 30, L. 1969
1963	Rep. Ch. 147, Sec. 242, L. 1963	3025-3033	Rep. Ch. 341, Sec. 30, L. 1969
1964	Rep. Ch. 280, Sec. 22, L. 1965	3040-3043	Rep. Ch. 144, Sec. 1, L. 1971
1966-1986	Rep. Ch. 280, Sec. 22, L. 1965	3076	Rep. Ch. 51, Sec. 2, L. 1971
1987	Rep. Ch. 147, Sec. 242, L. 1963	3116-3124	Rep. Ch. 338, Sec. 43, L. 1969
1988	Rep. Ch. 280, Sec. 22, L. 1965	3228.10	Rep. Ch. 177, Sec. 51, L. 1965
1989	Rep. Ch. 147, Sec. 242, L. 1963	3232	Rep. Ch. 138, Sec. 5, L. 1967
1990-1995	Rep. Ch. 280, Sec. 22, L. 1965	3241.1-3241.7	Rep. Ch. 118, Sec. 32, L. 1969
2000.4	Rep. Ch. 25, Sec. 1, L. 1971	3241.9-3241.12	Rep. Ch. 118, Sec. 32, L. 1969
		3258	Rep. Ch. 93, Sec. 44, L. 1969
		3291	Rep. Ch. 147, Sec. 242, L. 1963
		3292	Rep. Ch. 93, Sec. 44, L. 1969
		3310	Rep. Ch. 177, Sec. 51, L. 1965
		3357, 3358	Rep. Ch. 32, Sec. 1, L. 1953
		3359	Rep. Ch. 24, L. 1943; Ch. 32, Sec. 1, L. 1953
		3360-3373	Rep. Ch. 32, Sec. 1, L. 1953
		3420-3424	Rep. Ch. 310, Sec. 6, L. 1971

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1921 & 1935	1947	1921 & 1935	1947
3426-3434	Rep. Ch. 310, Sec. 6, L. 1971	4813.2	Rep. Ch. 264, Sec. 10-102, L. 1963
3454, 3455	Rep. Ch. 99, Sec. 43, L. 1969	4845, 4846	Rep. Ch. 197, Sec. 12-109, L. 1965
3509	Rep. Ch. 188, Sec. 4, L. 1959	4860	Rep. Ch. 68, Sec. 10, L. 1967
3525	Rep. Ch. 188, Sec. 4, L. 1959	4886	Rep. Ch. 420, Sec. 4, L. 1971
3575.3	Rep. Ch. 147, Sec. 242, L. 1963	4945	Rep. Ch. 196, Sec. 2, L. 1967
3592.17	Rep. Ch. 177, Sec. 51, L. 1965	4948, 4949	Rep. Ch. 5, Sec. 496, L. 1971
3593, 3594	Rep. Ch. 361, Sec. 7, L. 1969	4998	Rep. Ch. 260, Sec. 12, L. 1967
3634	Rep. Ch. 5, Sec. 496, L. 1971	5016, 5017	Rep. Ch. 67, Sec. 11, L. 1967
3634.1, 3634.2	Rep. Ch. 147, Sec. 242, L. 1963	5039.56	Rep. Ch. 99, Sec. 43, L. 1969
3722	Rep. Ch. 56, Sec. 1, L. 1969	5148.1	Unconstitutional, 134 M 355, 332 P 2d 501
3731, 3732	Rep. Ch. 38, Sec. 2, L. 1963	5158.2	Rep. Ch. 147, Sec. 242, L. 1963
3736	Rep. Ch. 38, Sec. 2, L. 1963	5508	Rep. Ch. 67, Sec. 11, L. 1967
3784	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963	5668.22, 5668.23	Rep. Ch. 147, Sec. 242, L. 1963
3786-3788	Rep. Ch. 129, Sec. 1, L. 1963	5668.28	Rep. Ch. 147, Sec. 242, L. 1963
3815	Rep. Ch. 93, Sec. 44, L. 1969	5696	Rep. Ch. 232, Sec. 12, L. 1963
3821	Rep. Ch. 199, Sec. 101, L. 1965	5707	Rep. Ch. 232, Sec. 12, L. 1963
3847.29	Rep. Ch. 148, Sec. 2, L. 1971	5711, 5712	Rep. Ch. 232, Sec. 12, L. 1963
3913.1, 3913.2	Rep. Ch. 153, Sec. 14, L. 1965	5715	Rep. Ch. 232, Sec. 12, L. 1963
3913.3	Rep. Ch. 174, Sec. 16, L. 1961	5731, 5732	Rep. Ch. 169, Sec. 4, L. 1963
4026-4050	Rep. Ch. 251, Sec. 28, L. 1961	5856-5866	Rep. Ch. 199, Sec. 1, L. 1961
4053	Rep. Ch. 251, Sec. 28, L. 1961	5900-5915	Rep. Ch. 300, Sec. 143, L. 1967
4056-4078	Rep. Ch. 250, Sec. 24, L. 1963	5917	Rep. Ch. 300, Sec. 143, L. 1967
4079-4127	Rep. Ch. 264, Sec. 10-102, L. 1963	5918-5928	Rep. Ch. 300, Sec. 143, L. 1967
4134-4138	Rep. Ch. 264, Sec. 10-102, L. 1963	5930-5953	Rep. Ch. 300, Sec. 143, L. 1967
4139.6	Rep. Ch. 93, Sec. 44, L. 1969	5954	Rep. Ch. 264, Sec. 10-102, L. 1963
4157-4172	Rep. Ch. 430, Sec. 23, L. 1971	5955	Rep. Ch. 300, Sec. 143, L. 1967
4208.1-4208.11	Rep. Ch. 55, Sec. 3, L. 1965	5956	Rep. Ch. 264, Sec. 10-102, L. 1963
4211	Rep. Ch. 225, Sec. 24, L. 1971	5957-6013	Rep. Ch. 300, Sec. 143, L. 1967
4212-4229	Rep. Ch. 99, Sec. 43, L. 1969	6014.63	Rep. Ch. 129, Sec. 1, L. 1963
4230.1	Rep. Ch. 99, Sec. 43, L. 1969	6014.91, 6014.92	Rep. Ch. 264, Sec. 10-102, L. 1963
4232	Rep. Ch. 99, Sec. 43, L. 1969	6014.100, 6014.101	Rep. Ch. 264, Sec. 10-102, L. 1963
4234-4238	Rep. Ch. 99, Sec. 43, L. 1969	6014.127	Rep. Ch. 264, Sec. 10-102, L. 1963
4240-4243	Rep. Ch. 99, Sec. 43, L. 1969	6109.12-6109.39	Rep. Ch. 236, Sec. 30, L. 1963
4244	Rep. Ch. 160, Sec. 24, L. 1965	6155	Rep. Ch. 43, Sec. 4, L. 1959
4245	Rep. Ch. 99, Sec. 43, L. 1969	6236	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967
4246	Rep. Ch. 160, Sec. 24, L. 1965	6450-6468	Rep. Ch. 198, Sec. 98, L. 1967
4247-4257	Rep. Ch. 99, Sec. 43, L. 1969	6535	Rep. Ch. 264, Sec. 10-102, L. 1963
4258	Rep. Ch. 160, Sec. 24, L. 1965	6537-6539	Rep. Ch. 264, Sec. 10-102, L. 1963
4259-4264	Rep. Ch. 99, Sec. 43, L. 1969	6648-6661.1	Rep. Ch. 300, Sec. 143, L. 1967
4273	Rep. Ch. 160, Sec. 24, L. 1965	6721	Rep. Ch. 213, Sec. 3, L. 1959
4276	Rep. Ch. 307, Sec. 27, L. 1967	6734	Rep. Ch. 213, Sec. 3, L. 1959
4396.1	Rep. Ch. 194, Sec. 13, L. 1967	6736-6739	Rep. Ch. 213, Sec. 3, L. 1959
4405	Rep. Ch. 194, Sec. 13, L. 1967	6878-6880	Rep. Ch. 264, Sec. 10-102, L. 1963
4448	S. M.R.Civ.P., Rule 4 D	7111, 7112	Rep. Ch. 197, Sec. 12-109, L. 1965
4455	Rep. Ch. 68, Sec. 10, L. 1967	7591, 7592	Rep. Ch. 264, Sec. 10-102, L. 1963
4465.28	Rep. Ch. 136, Sec. 6, L. 1971	7594-7597	Rep. Ch. 264, Sec. 10-102, L. 1963
4479	Rep. Ch. 197, Sec. 12-109, L. 1965	7618	Rep. Ch. 264, Sec. 10-102, L. 1963
4486.1, 4486.2	Rep. Ch. 197, Sec. 12-109, L. 1965	7622-7624	Rep. Ch. 264, Sec. 10-102, L. 1963
4542-4544	Rep. Ch. 198, Sec. 98, L. 1967		
4562.1-4562.3	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963		
4594	Rep. Ch. 136, Sec. 1, L. 1961		
4630.2	Rep. Ch. 197, Sec. 12-109, L. 1965		
4631	Rep. Ch. 5, Sec. 2, 2nd Ex. L. 1971		
4713-4716	Rep. Ch. 197, Sec. 12-109, L. 1965		

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7633	Rep. Ch. 264, Sec. 10-102, L. 1963	9151-9162	Rep. Ch. 13, Sec. 84, L. 1961
7828-7834	Rep. Ch. 264, Sec. 10-102, L. 1963	9164-9166	Rep. Ch. 13, Sec. 84, L. 1961
7871-7873	Rep. Ch. 264, Sec. 10-102, L. 1963	9169-9171	Rep. Ch. 13, Sec. 84, L. 1961
8210-8218	Rep. Ch. 264, Sec. 10-102, L. 1963	9174-9176	Rep. Ch. 13, Sec. 84, L. 1961
8224	Rep. Ch. 264, Sec. 10-102, L. 1963	9178-9187	Rep. Ch. 13, Sec. 84, L. 1961
8275-8285	Rep. Ch. 264, Sec. 10-102, L. 1963	9189	Rep. Ch. 13, Sec. 84, L. 1961
8289, 8290	Rep. Ch. 264, Sec. 10-102, L. 1963	9191	Rep. Ch. 13, Sec. 84, L. 1961
8290.1	Rep. Ch. 264, Sec. 10-102, L. 1963	9239	Rep. Ch. 13, Sec. 84, L. 1961
8295	Rep. Ch. 264, Sec. 10-102, L. 1963	9292	Rep. Ch. 264, Sec. 10-102, L. 1963
8298	Rep. Ch. 264, Sec. 10-102, L. 1963	9295	Rep. Ch. 300, Sec. 143, L. 1967
8306-8317	Rep. Ch. 264, Sec. 10-102, L. 1963	9313	Rep. Ch. 13, Sec. 84, L. 1961
8381	Rep. Ch. 264, Sec. 10-102, L. 1963	9315-9317	Rep. Ch. 13, Sec. 84, L. 1961
8393-8395	Rep. Ch. 32, Sec. 1, L. 1953	9320-9322	Rep. Ch. 13, Sec. 84, L. 1961
8396-8400	Rep. Ch. 264, Sec. 10-102, L. 1963	9324	Rep. Ch. 13, Sec. 84, L. 1961
8401-8493	Rep. Ch. 264, Sec. 10-102, L. 1963	9326-9328	Rep. Ch. 13, Sec. 84, L. 1961
8495-8597	Rep. Ch. 264, Sec. 10-102, L. 1963	9330, 9331	Rep. Ch. 13, Sec. 84, L. 1961
8607-8611	Rep. Ch. 264, Sec. 10-102, L. 1963	9345-9347	Rep. Ch. 13, Sec. 84, L. 1961
8674-8680	Rep. Ch. 264, Sec. 10-102, L. 1963	9359-9361	Rep. Ch. 13, Sec. 84, L. 1961
8685	Rep. Ch. 200, Sec. 7, L. 1963	9365	Rep. Ch. 13, Sec. 84, L. 1961
8699, 8700	Rep. Ch. 264, Sec. 10-102, L. 1963	9366	S. M.R.Civ.P., Rule 52(a)
8839	Rep. Ch. 68, Sec. 10, L. 1967	9367	Rep. Ch. 13, Sec. 84, L. 1961
8905-8907	Rep. Ch. 110, Sec. 4, L. 1969	9369-9371	S. M.R.Civ.P., Rule 52(b)
8911, 8912	Rep. Ch. 110, Sec. 4, L. 1969	9374-9376	Rep. Ch. 13, Sec. 84, L. 1961
8956, 8957	Rep. Ch. 147, Sec. 242, L. 1963	9378-9380	Rep. Ch. 13, Sec. 84, L. 1961
8960	Rep. Ch. 147, Sec. 242, L. 1963	9383-9385	Rep. Ch. 13, Sec. 84, L. 1961
9010	Rep. Ch. 13, Sec. 84, L. 1961	9386	S. M.R.App.Civ.P.
9065	Rep. Ch. 7, Sec. 1, L. 1963	9387	Rep. Ch. 13, Sec. 84, L. 1961
9067	Rep. Ch. 13, Sec. 84, L. 1961	9388	S. M.R.App.Civ.P.
9071	Rep. Ch. 13, Sec. 84, L. 1961	9389-9394	S. M.R.App.Civ.P., Rules 9, 10, 25
9077, 9078	Rep. Ch. 13, Sec. 84, L. 1961	9399	Rep. Ch. 13, Sec. 84, L. 1961
9080	Rep. Ch. 13, Sec. 84, L. 1961	9400	S. M.R.Civ.P., Rule 59(d)
9082-9084	Rep. Ch. 13, Sec. 84, L. 1961	9401	S. M.R.App.Civ.P., Rule 7
9087, 9088	Rep. Ch. 13, Sec. 84, L. 1961	9402	S. M.R.App.Civ.P., Rules 9, 10, 25
9090	Rep. Ch. 13, Sec. 84, L. 1961	9403	Rep. Ch. 13, Sec. 84, L. 1961
9097	Rep. Ch. 13, Sec. 84, L. 1961	9404	S. M.R.App.Civ.P., Rule 29
9105	Rep. Ch. 6, Sec. 1, L. 1963	9405	Rep. Ch. 13, Sec. 84, L. 1961
9106	S. M.R.Civ.P., Rule 41(e)	9482, 9483	Rep. Ch. 189, Sec. 2, L. 1963
9107	Rep. Ch. 13, Sec. 84, L. 1961	9485	Rep. Ch. 189, Sec. 2, L. 1963
9108	Rep. Ch. 5, Sec. 1 and Ch. 189, Sec. 2, L. 1963	9731	S. M.R.App.Civ.P., Rule 1
9110, 9111	Rep. Ch. 13, Sec. 84, L. 1961	9732	S. M.R.App.Civ.P., Rule 5
9112	S. M.R.Civ.P., Rule 4 D	9733	S. M.R.App.Civ.P., Rules 4, 6
9113, 9114	Rep. Ch. 189, Sec. 2, L. 1963	9734	S. M.R.App.Civ.P., Rule 6
9115, 9116	S. M.R.Civ.P., Rule 4 D	9735-9738	Rep. Ch. 13, Sec. 84, L. 1961
9117-9119	Rep. Ch. 13, Sec. 84, L. 1961	9739	S. M.R.App.Civ.P., Rule 7
9121, 9122	Rep. Ch. 13, Sec. 84, L. 1961	9740	S. M.R.App.Civ.P., Rules 6, 7
9123	Rep. Ch. 189, Sec. 2, L. 1963	9742	S. M.R.App.Civ.P., Rule 7
9125-9138	Rep. Ch. 13, Sec. 84, L. 1961	9743	S. M.R.App.Civ.P., Rule 6
9140, 9141	Rep. Ch. 13, Sec. 84, L. 1961	9744	S. M.R.App.Civ.P., Rule 13
9144	Rep. Ch. 13, Sec. 84, L. 1961	9745	S. M.R.App.Civ.P., Rule 1
9146-9148	Rep. Ch. 13, Sec. 84, L. 1961	9746	S. M.R.App.Civ.P., Rules 9, 10, 25
		9747	S. M.R.App.Civ.P., Rules 3, 4, 6, 9-11, 25
		9748	S. M.R.App.Civ.P., Rule 12
		9749	S. M.R.App.Civ.P., Rules 9, 10, 25
		9750	S. M.R.App.Civ.P., Rule 2
		9751	S. M.R.App.Civ.P., Rule 14
		9752	S. M.R.App.Civ.P., Rule 15
		9753	S. M.R.App.Civ.P., Rule 16
		9770-9772	Rep. Ch. 13, Sec. 84, L. 1961
		9774	Rep. Ch. 13, Sec. 84, L. 1961
		9778-9781	Rep. Ch. 13, Sec. 84, L. 1961

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9784	Rep. Ch. 13, Sec. 84, L. 1961	12439	Rep. Ch. 266, Sec. 82, L. 1963
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9820	Rep. Ch. 13, Sec. 84, L. 1961	12443-12445	Rep. Ch. 266, Sec. 82, L. 1963
9922-9932	Rep. Ch. 300, Sec. 143, L. 1967	12446-12447	Rep. Ch. 199, Sec. 101, L. 1965
10294	Rep. Ch. 272, Sec. 1, L. 1969	12447.1-12447.10	Rep. Ch. 15, Sec. 1, L. 1959
10620	Rep. Ch. 13, Sec. 84, L. 1961	12447.11-12449	Rep. Ch. 199, Sec. 101, L. 1965
10622	Rep. Ch. 154, Sec. 1, L. 1959	12450	Rep. Ch. 15, Sec. 1, L. 1959
10643-10658	Rep. Ch. 13, Sec. 84, L. 1961	12451-12453	Rep. Ch. 266, Sec. 82, L. 1963
10686-10692	Rep. Ch. 13, Sec. 84, L. 1961	12454	Rep. Ch. 199, Sec. 101, L. 1965
10925	94-3920	12456	Rep. Ch. 199, Sec. 101, L. 1965
11039.1	Rep. Ch. 114, Sec. 1, L. 1971	12458-12459	Rep. Ch. 199, Sec. 101, L. 1965
11045	Rep. Ch. 314, Sec. 14, L. 1969	12460	Rep. Ch. 266, Sec. 82, L. 1963
11180	Rep. Ch. 196, Sec. 15, L. 1965	12461-12462	Rep. Ch. 199, Sec. 101, L. 1965
11239	Rep. Ch. 314, Sec. 14, L. 1969	12463	Rep. Ch. 147, Sec. 242 and Ch. 266, Sec. 82, L. 1963
11254	Rep. Ch. 39, Sec. 1, L. 1969	12464	Rep. Ch. 199, Sec. 101, L. 1965
11464	Rep. Ch. 197, Sec. 12-109, L. 1965	12465	Rep. Ch. 266, Sec. 82, L. 1963
11473	Rep. Ch. 174, Sec. 3, L. 1963	12465.1-12465.8	Rep. Ch. 199, Sec. 101, L. 1965
11567	Rep. Ch. 52, Sec. 1, L. 1959	12488, 12489	Rep. Ch. 266, Sec. 82, L. 1963
11579	Rep. Ch. 135, Sec. 2, L. 1967	12491-12493	Rep. Ch. 266, Sec. 82, L. 1963
11596, 11597	Rep. Ch. 196, Sec. 2, L. 1967	12494	Rep. Ch. 199, Sec. 101, L. 1965
11608	Rep. Ch. 196, Sec. 2, L. 1967	12495	Rep. Ch. 266, Sec. 82, L. 1963
11610	Rep. Ch. 196, Sec. 2, L. 1967	12496	Rep. Ch. 199, Sec. 101, L. 1965
11612	Rep. Ch. 228, Sec. 6, L. 1969	12497	Rep. Ch. 266, Sec. 82, L. 1963
11615-11631	Rep. Ch. 196, Sec. 2, L. 1967	12499	Rep. Ch. 199, Sec. 101, L. 1965
11703-11721	Rep. Ch. 196, Sec. 2, L. 1967	12500-12502	Rep. Ch. 266, Sec. 82, L. 1963
11728-11846	Rep. Ch. 196, Sec. 2, L. 1967	12503-12512	Rep. Ch. 199, Sec. 101, L. 1965
11847	Rep. Ch. 172, Sec. 3, L. 1961	12513-12515	Rep. Ch. 266, Sec. 82, L. 1963
11848-11853	Rep. Ch. 196, Sec. 2, L. 1967	12519	Rep. Ch. 266, Sec. 82, L. 1963
11862	Rep. Ch. 196, Sec. 2, L. 1967	12520-12521	Rep. Ch. 199, Sec. 101, L. 1965
11866-11868	Rep. Ch. 196, Sec. 2, L. 1967	12522	Rep. Ch. 266, Sec. 82, L. 1963
11870-11911	Rep. Ch. 196, Sec. 2, L. 1967	12524-12528	Rep. Ch. 266, Sec. 82, L. 1963
11912-11914	Rep. Ch. 228, Sec. 6, L. 1969	12529	Rep. Ch. 199, Sec. 101, L. 1965
11915-11970	Rep. Ch. 196, Sec. 2, L. 1967	12530-12532	Rep. Ch. 266, Sec. 82, L. 1963
11973	Rep. Ch. 196, Sec. 2, L. 1967	12533	Rep. Ch. 199, Sec. 101, L. 1965
11989-12001	Rep. Ch. 196, Sec. 2, L. 1967	12534	Rep. Ch. 266, Sec. 82, L. 1963
12002	Rep. Ch. 228, Sec. 6, L. 1969	12535-12545	Rep. Ch. 199, Sec. 101, L. 1965
12003-12007	Rep. Ch. 196, Sec. 2, L. 1967	12546	Rep. Ch. 266, Sec. 82, L. 1963
12009-12014	Rep. Ch. 196, Sec. 2, L. 1967	12547-12552	Rep. Ch. 199, Sec. 101, L. 1965
12016-12074	Rep. Ch. 196, Sec. 2, L. 1967	12572	Rep. Ch. 199, Sec. 101, L. 1965
12078	Rep. Ch. 196, Sec. 2, L. 1967		
12080	Rep. Ch. 196, Sec. 2, L. 1967		
12087-12174	Rep. Ch. 196, Sec. 2, L. 1967		
12179-12198	Rep. Ch. 196, Sec. 2, L. 1967		
12213-12218	Rep. Ch. 196, Sec. 2, L. 1967		
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12302-12414	Rep. Ch. 196, Sec. 2, L. 1967		
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47	Unconstitutional, 246 F Supp 396	598-641	Rep. Ch. 368, Sec. 248, L. 1969
53, 54	Rep. Ch. 194, Sec. 13, L. 1967	642-646	Rep. Ch. 5, Sec. 496, L. 1971
56	Rep. Ch. 18, Sec. 4, L. 1969	648	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971
61-64	Rep. Ch. 1, Sec. 4, L. 1965	666	Rep. Ch. 2, Sec. 63, L. 1971
68, 69	Rep. Ch. 1, Sec. 4, L. 1965	668	Rep. Ch. 2, Sec. 63, L. 1971
71-74	Rep. Ch. 1, Sec. 4, L. 1965	673-680	Rep. Ch. 2, Sec. 63, L. 1971
76	Rep. Ch. 1, Sec. 4, L. 1965	689	Rep. Ch. 2, Sec. 63, L. 1971
79	Rep. Ch. 1, Sec. 4, L. 1965	698	Rep. Ch. 2, Sec. 63, L. 1971
81	Rep. Ch. 1, Sec. 4, L. 1965	705	Rep. Ch. 2, Sec. 63, L. 1971
158	Rep. Ch. 80, Sec. 14, L. 1961	732	Rep. Ch. 2, Sec. 63, L. 1971
169	Rep. Ch. 177, Sec. 51, L. 1965	738-741	Rep. Ch. 2, Sec. 63, L. 1971
172	Rep. Ch. 147, Sec. 242, L. 1963	756	Rep. Ch. 2, Sec. 63, L. 1971
177	Rep. Ch. 94, Sec. 5, L. 1969	763-765	Rep. Ch. 2, Sec. 63, L. 1971
180	Rep. Ch. 147, Sec. 242, L. 1963	766-769	Rep. Ch. 75, Sec. 5, L. 1967
184	Rep. Ch. 152, Sec. 3, L. 1971	772, 773	Rep. Ch. 2, Sec. 63, L. 1971
189	Rep. Ch. 177, Sec. 51, L. 1965	775	Rep. Ch. 2, Sec. 63, L. 1971
190	Rep. Ch. 152, Sec. 3, L. 1971	790	81-1007.1
195	Rep. Ch. 177, Sec. 51, L. 1965	805	Rep. Ch. 5, Sec. 496, L. 1971
196	Rep. Ch. 129, Sec. 1, L. 1963	807, 808	Rep. Ch. 5, Sec. 496, L. 1971
214	Rep. Ch. 129, Sec. 1, L. 1963	810	Rep. Ch. 5, Sec. 496, L. 1971
217	Rep. Ch. 177, Sec. 51, L. 1965	812-816	Rep. Ch. 5, Sec. 496, L. 1971
232-235	Rep. Ch. 97, Sec. 32, L. 1961	817, 818	Rep. Ch. 93, Sec. 44, L. 1969
243	Rep. Ch. 97, Sec. 32, L. 1961	819	Rep. Ch. 5, Sec. 496, L. 1971
245-247	Rep. Ch. 80, Sec. 14, L. 1961	823-829	Rep. Ch. 5, Sec. 496, L. 1971
248	Rep. Ch. 271, Sec. 33, L. 1963	833, 834	Rep. Ch. 5, Sec. 496, L. 1971
249-253	Rep. Ch. 80, Sec. 14, L. 1961	838-840	Rep. Ch. 5, Sec. 496, L. 1971
257-260	Rep. Ch. 80, Sec. 14, L. 1961	844	Rep. Ch. 5, Sec. 496, L. 1971
262, 263	Rep. Ch. 80, Sec. 14, L. 1961	848-850	Rep. Ch. 5, Sec. 496, L. 1971
265-267	Rep. Ch. 271, Sec. 33, L. 1963	855	Rep. Ch. 5, Sec. 496, L. 1971
297	Rep. Ch. 129, Sec. 1, L. 1963	857-860	Rep. Ch. 5, Sec. 496, L. 1971
305	Rep. Ch. 177, Sec. 51, L. 1965	862	Rep. Ch. 5, Sec. 496, L. 1971
308-311	Rep. Ch. 305, Sec. 2, L. 1967	866	Rep. Ch. 5, Sec. 496, L. 1971
321	Rep. Ch. 264, Sec. 10-102, L. 1963	871, 872	Rep. Ch. 5, Sec. 496, L. 1971
378-379	Rep. Ch. 177, Sec. 51, L. 1965	881-883	Rep. Ch. 5, Sec. 496, L. 1971
380	Rep. Ch. 68, Sec. 10, L. 1967	885	Rep. Ch. 5, Sec. 496, L. 1971
417	Rep. Ch. 68, Sec. 10, L. 1967	899	Rep. Ch. 5, Sec. 496, L. 1971
443-445	Rep. Ch. 80, Sec. 14, L. 1961	902-907	Rep. Ch. 5, Sec. 496, L. 1971
450-457	Rep. Ch. 368, Sec. 248, L. 1969	909	Rep. Ch. 5, Sec. 496, L. 1971
459-462	Rep. Ch. 368, Sec. 248, L. 1969	911-916	Rep. Ch. 5, Sec. 496, L. 1971
464-466	Rep. Ch. 368, Sec. 248, L. 1969	941	Rep. Ch. 5, Sec. 496, L. 1971
469	Rep. Ch. 368, Sec. 248, L. 1969	943-945	Rep. Ch. 5, Sec. 496, L. 1971
497-498	Rep. Ch. 368, Sec. 248, L. 1969	946	Rep. Ch. 26, Sec. 1, L. 1961
500-517	Rep. Ch. 368, Sec. 248, L. 1969	948-951	Rep. Ch. 26, Sec. 1, L. 1961
519-530	Rep. Ch. 368, Sec. 248, L. 1969	965, 966	Rep. Ch. 5, Sec. 496, L. 1971
532-570	Rep. Ch. 368, Sec. 248, L. 1969	968	Rep. Ch. 262, Sec. 16, L. 1969
572-580	Rep. Ch. 368, Sec. 248, L. 1969	969-971	Rep. Ch. 5, Sec. 496, L. 1971
582-594	Rep. Ch. 368, Sec. 248, L. 1969		

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973	Rep. Ch. 5, Sec. 496, L. 1971	2255-2269	Rep. Ch. 280, Sec. 22, L. 1965
993, 994	Rep. Ch. 5, Sec. 496, L. 1971	2271-2276	Rep. Ch. 280, Sec. 22, L. 1965
997	Rep. Ch. 5, Sec. 496, L. 1971	2277	Rep. Ch. 147, Sec. 242, L. 1963
999-1003	Rep. Ch. 5, Sec. 496, L. 1971	2278	Rep. Ch. 280, Sec. 22, L. 1965
1007	Rep. Ch. 5, Sec. 496, L. 1971	2279	Rep. Ch. 147, Sec. 242, L. 1963
1011	Rep. Ch. 5, Sec. 496, L. 1971	2280-2281	Rep. Ch. 280, Sec. 22, L. 1965
1013	Rep. Ch. 5, Sec. 496, L. 1971	2725-2727	Rep. Ch. 249, Sec. 23, L. 1967
1019-1029	Rep. Ch. 5, Sec. 496, L. 1971	2877	S. M.R. Civ.P., Rule 4 D
1033-1035	Rep. Ch. 5, Sec. 496, L. 1971	2884	Rep. Ch. 68, Sec. 10, L. 1967
1038, 1039	Rep. Ch. 5, Sec. 496, L. 1971	2921	Rep. Ch. 5, Sec. 2, 2nd Ex. L. 1971
1041, 1042	Rep. Ch. 5, Sec. 496, L. 1971	3063, 3064	Rep. Ch. 197, Sec. 12-109, L. 1965
1043, 1044	Rep. Ch. 5, Sec. 496, L. 1971	3097	Rep. Ch. 68, Sec. 10, L. 1967
1113	Rep. Ch. 266, Sec. 82, L. 1963	3138	Rep. Ch. 420, Sec. 4, L. 1971
1132	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963	3190	Rep. Ch. 196, Sec. 2, L. 1967
1147	Rep. Ch. 213, Sec. 9, L. 1963	3195, 3196	Rep. Ch. 5, Sec. 496, L. 1971
1249-1250	Rep. Ch. 199, Sec. 101, L. 1965	3219	Rep. Ch. 260, Sec. 12, L. 1967
1259	Rep. Ch. 199, Sec. 101, L. 1965	3237, 3238	Rep. Ch. 67, Sec. 11, L. 1967
1260, 1261	Rep. Ch. 266, Sec. 82, L. 1963	3608	Rep. Ch. 232, Sec. 12, L. 1963
1265	Rep. Ch. 266, Sec. 82, L. 1963	3614	Rep. Ch. 232, Sec. 12, L. 1963
1267	Rep. Ch. 266, Sec. 82, L. 1963	3618, 3619	Rep. Ch. 232, Sec. 12, L. 1963
1270	Rep. Ch. 266, Sec. 82, L. 1963	3622	Rep. Ch. 232, Sec. 12, L. 1963
1273	Rep. Ch. 266, Sec. 82, L. 1963	3638, 3639	Rep. Ch. 169, Sec. 4, L. 1963
1277-1280	Rep. Ch. 199, Sec. 101, L. 1965	3761-3771	Rep. Ch. 199, Sec. 1, L. 1961
1281	Rep. Ch. 266, Sec. 82, L. 1963	3805-3811	Rep. Ch. 300, Sec. 143, L. 1967
1282-1283	Rep. Ch. 199, Sec. 101, L. 1965	3816-3825	Rep. Ch. 300, Sec. 143, L. 1967
1284-1287	Rep. Ch. 266, Sec. 82, L. 1963	3829-3854	Rep. Ch. 300, Sec. 143, L. 1967
1288	Rep. Ch. 199, Sec. 101, L. 1965	3855	Rep. Ch. 264, Sec. 10-102, L. 1963
1289	Rep. Ch. 266, Sec. 82, L. 1963	3856	Rep. Ch. 300, Sec. 143, L. 1967
1290, 1291	Rep. Ch. 199, Sec. 101, L. 1965	3857	Rep. Ch. 264, Sec. 10-102, L. 1963
1292	Rep. Ch. 266, Sec. 82, L. 1963	3858-3887	Rep. Ch. 300, Sec. 143, L. 1967
1293	Rep. Ch. 199, Sec. 201, L. 1965	3889-3893	Rep. Ch. 300, Sec. 143, L. 1967
1294	Rep. Ch. 266, Sec. 82, L. 1963	3895-3900	Rep. Ch. 300, Sec. 143, L. 1967
1298	Rep. Ch. 199, Sec. 101, L. 1965	3902-3906	Rep. Ch. 300, Sec. 143, L. 1967
1299-1301	Rep. Ch. 266, Sec. 82, L. 1963	3908	Rep. Ch. 300, Sec. 143, L. 1967
1302	Rep. Ch. 199, Sec. 101, L. 1965	4069	Rep. Ch. 43, Sec. 4, L. 1959
1305	Rep. Ch. 266, Sec. 82, L. 1963	4221-4236	Rep. Ch. 198, Sec. 98, L. 1967
1306	Rep. Ch. 190, Sec. 1, L. 1959	4303	Rep. Ch. 264, Sec. 10-102, L. 1963
1308-1310	Rep. Ch. 190, Sec. 1, L. 1959	4305-4307	Rep. Ch. 264, Sec. 10-102, L. 1963
1474, 1475	Rep. Ch. 197, Sec. 223, L. 1967	4368	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963
1477	Rep. Ch. 197, Sec. 223, L. 1967	4396	Rep. Ch. 93, Sec. 44, L. 1969
1481-1511	Rep. Ch. 197, Sec. 223, L. 1967	4403, 4404	Rep. Ch. 300, Sec. 143, L. 1967
1559-1572	Rep. Ch. 197, Sec. 223, L. 1967	4413-4420	Rep. Ch. 300, Sec. 143, L. 1967
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1659	Rep. Ch. 225, Sec. 24, L. 1971	4492	Rep. Ch. 213, Sec. 3, L. 1959
1714-1717	Rep. Ch. 310, Sec. 6, L. 1971	4494-4497	Rep. Ch. 213, Sec. 3, L. 1959
1719	Rep. Ch. 310, Sec. 6, L. 1971	4631-4633	Rep. Ch. 264, Sec. 10-102, L. 1963
1721-1726	Rep. Ch. 310, Sec. 6, L. 1971	4858, 4859	Rep. Ch. 197, Sec. 12-109, L. 1965
1797	Rep. Ch. 177, Sec. 51, L. 1965	5089, 5090	Rep. Ch. 264, Sec. 10-102, L. 1963
2009-2024	Rep. Ch. 99, Sec. 43, L. 1969	5092-5094a	Rep. Ch. 264, Sec. 10-102, L. 1963
2026	Rep. Ch. 99, Sec. 43, L. 1969	5115	Rep. Ch. 264, Sec. 10-102, L. 1963
2095	Rep. Ch. 5, Sec. 496, L. 1971	5119-5121	Rep. Ch. 264, Sec. 10-102, L. 1963
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2243	Rep. Ch. 280, Sec. 1, L. 1965	5177	Rep. Ch. 135, Sec. 2, L. 1967
2244	Rep. Ch. 280, Sec. 22, L. 1965	5314-5320	Rep. Ch. 264, Sec. 10-102, L. 1963
2245	Rep. Ch. 280, Sec. 1, L. 1965		
2246	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963		
2247	Rep. Ch. 280, Sec. 1, L. 1965		
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5803	Rep. Ch. 264, Sec. 10-102, L. 1963	6771-6773	Rep. Ch. 13, Sec. 84, L. 1961
5813-5815	Rep. Ch. 32, Sec. 1, L. 1953	6775-6777	Rep. Ch. 13, Sec. 84, L. 1961
5837-5934	Rep. Ch. 264, Sec. 10-102, L. 1963	6780-6782	Rep. Ch. 13, Sec. 84, L. 1961
5936-6037a	Rep. Ch. 264, Sec. 10-102, L. 1963	6784	Rep. Ch. 13, Sec. 84, L. 1961
6056-6062	Rep. Ch. 264, Sec. 10-102, L. 1963	6785	S. M.R.App.Civ.P.
6067	Rep. Ch. 200, Sec. 7, L. 1963	6787-6792	S. M.R.App.Civ.P., Rules 9, 10, 25
6081, 6082	Rep. Ch. 264, Sec. 10-102, L. 1963	6796	Rep. Ch. 13, Sec. 84, L. 1961
6131-6135	Rep. Ch. 264, Sec. 10-102, L. 1963	6797	S. M.R.Civ.P., Rule 59(d)
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6498	Rep. Ch. 13, Sec. 84, L. 1961	7102-7105	Rep. Ch. 13, Sec. 84, L. 1961
6505	Rep. Ch. 13, Sec. 84, L. 1961	7106	S. M.R.App.Civ.P., Rule 7
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6514	S. M.R.Civ.P., Rule 41(e)	7109	S. M.R.App.Civ.P., Rule 7
6515	Rep. Ch. 13, Sec. 84, L. 1961	7110	S. M.R.App.Civ.P., Rule 6
5516	Rep. Ch. 5, Sec. 1 and Ch. 189, Sec. 2, L. 1963	7111	S. M.R.App.Civ.P., Rule 13
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5524, 6525	Rep. Ch. 13, Sec. 84, L. 1961	7115	S. M.R.App.Civ.P., Rules 9, 10, 25
5526	Rep. Ch. 189, Sec. 2, L. 1963	7116	S. M.R.App.Civ.P., Rules 3, 4, 6, 9-11, 25
5528-6541	Rep. Ch. 13, Sec. 84, L. 1961	7117	S. M.R.App.Civ.P., Rule 12
5543, 6544	Rep. Ch. 13, Sec. 84, L. 1961	7118	S. M.R.App.Civ.P., Rule 14
5547	Rep. Ch. 13, Sec. 84, L. 1961	7119	S. M.R.App.Civ.P., Rule 15
5549-6551	Rep. Ch. 13, Sec. 84, L. 1961	7120	S. M.R.App.Civ.P., Rule 16
5554-6564	Rep. Ch. 13, Sec. 84, L. 1961	7137-7139	Rep. Ch. 13, Sec. 84, L. 1961
6566-6568	Rep. Ch. 13, Sec. 84, L. 1961	7141	Rep. Ch. 13, Sec. 84, L. 1961
6571-6573	Rep. Ch. 13, Sec. 84, L. 1961	7145-7148	Rep. Ch. 13, Sec. 84, L. 1961
6576-6578	Rep. Ch. 13, Sec. 84, L. 1961	7151	Rep. Ch. 13, Sec. 84, L. 1961
6580-6589	Rep. Ch. 13, Sec. 84, L. 1961	7159	Rep. Ch. 13, Sec. 84, L. 1961
6591	Rep. Ch. 13, Sec. 84, L. 1961	7187	Rep. Ch. 13, Sec. 84, L. 1961
6593	Rep. Ch. 13, Sec. 84, L. 1961	7323-7329	Rep. Ch. 300, Sec. 143, L. 1967
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27	1-10	Rep. Ch. 197, Sec. 223, L. 1967	125	1-2	Rep. Ch. 300, Sec. 143, L. 1967
29	1	Rep. Ch. 368, Sec. 248, L. 1969	126	1	Rep. Ch. 129, Sec. 1, L. 1963
35	3-5	Rep. Ch. 110, Sec. 4, L. 1969	130	1	Rep. Ch. 368, Sec. 248, L. 1969
36	1-13	Rep. Ch. 18, Sec. 12, L. 1967	131	1	Rep. Ch. 129, Sec. 1, L. 1963
37	1	Rep. Ch. 300, Sec. 143, L. 1967	134	1-4	Rep. Ch. 144, Sec. 1, L. 1971
38	1-5	Rep. Ch. 5, Sec. 496, L. 1971	143	1-5	Rep. Ch. 197, Sec. 12-109, L. 1965
			146	1	Rep. Ch. 264, Sec. 10-102, L. 1963

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152	1	Rep. Ch. 264, Sec. 10-102, L. 1963
154	1	Rep. Ch. 202, Sec. 3, L. 1959
155	1	Rep. Ch. 160, Sec. 24, L. 1965
	4	Rep. Ch. 307, Sec. 27, L. 1967
157	1-3	Rep. Ch. 197, Sec. 223, L. 1967
160	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
161	1-7	Rep. Ch. 2, Sec. 63, L. 1971
162	1	Rep. Ch. 266, Sec. 82, L. 1963
	2-6	Rep. Ch. 199, Sec. 101, L. 1965
177	1	Rep. Ch. 13, Sec. 84, L. 1961
183	1	Rep. Ch. 264, Sec. 10-102, L. 1963
189	1	Rep. Ch. 300, Sec. 143, L. 1967
193	1	Rep. Ch. 5, Sec. 496, L. 1971
196	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
	4-9	Rep. Ch. 5, Sec. 496, L. 1971
	11-16	Rep. Ch. 5, Sec. 496, L. 1971
	20	Rep. Ch. 5, Sec. 496, L. 1971
	23	Rep. Ch. 5, Sec. 496, L. 1971
	30, 31	Rep. Ch. 5, Sec. 496, L. 1971
	33	Rep. Ch. 5, Sec. 496, L. 1971
197	1	Rep. Ch. 56, Sec. 1, L. 1969
205	2-5	Rep. Ch. 158, Sec. 11, L. 1959
	8	Rep. Ch. 147, Sec. 242, L. 1963
	10	Rep. Ch. 158, Sec. 11, L. 1959
225	1-16	Rep. Ch. 430, Sec. 23, L. 1971
226	14	Rep. Ch. 194, Sec. 13, L. 1967

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Ch.	Sec.	Herein
4	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965
5	1-13	S. Ch. 137, L. 1949

Ch.	Sec.	Herein
15	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
26	1	Rep. Ch. 189, Sec. 2, L. 1959

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Ch.	Sec.	Herein
4	1	Rep. Ch. 5, Sec. 496, L. 1971
6	1	Rep. Ch. 194, Sec. 13, L. 1967
9	1	Rep. Ch. 80, Sec. 14, L. 1961
10	1	Rep. Ch. 2, Sec. 63, L. 1971
11	1	81-1007.1
35	1	Rep. Ch. 68, Sec. 10, L. 1967
36	1	S. M.R.App.Civ.P., Rules 9, 10, 25
42	1	Rep. Ch. 199, Sec. 101, L. 1965
43	1	Rep. Ch. 199, Sec. 101, L. 1965
56	1-11	Rep. Ch. 300, Sec. 143, L. 1967
61	1	Rep. Ch. 266, Sec. 82, L. 1963
62	1	Rep. Ch. 199, Sec. 101, L. 1965
63	1	Rep. Ch. 5, Sec. 496, L. 1971
65	1	Rep. Ch. 79, Sec. 1, L. 1961
68	1	Rep. Ch. 266, Sec. 82, L. 1963
74	1	Rep. Ch. 99, Sec. 43, L. 1969
75	1-4	Rep. Ch. 5, Sec. 496, L. 1971
80	1	Rep. Ch. 300, Sec. 143, L. 1967
84	1	Rep. Ch. 18, Sec. 12, L. 1967
85	1	Rep. Ch. 251, Sec. 28, L. 1961
88	1	Rep. Ch. 368, Sec. 248, L. 1969
	3	Rep. Ch. 368, Sec. 248, L. 1969
95	1	Rep. Ch. 300, Sec. 143, L. 1967
104	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
108	2	Rep. Ch. 80, Sec. 14, L. 1961
124	1	Rep. Ch. 197, Sec. 223, L. 1967

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133	1	Rep. Ch. 190, Sec. 1, L. 1959		33	Rep. Ch. 93, Sec. 44, L. 1969
140	1	Rep. Ch. 99, Sec. 43, L. 1969	263	1	Rep. Ch. 300, Sec. 143, L. 1967
	3	Rep. Ch. 99, Sec. 43, L. 1969	264	1-3	Rep. Ch. 300, Sec. 143, L. 1967
146	1-2	S. Ch. 137, L. 1949	1921 Ex. Sess.		
147	21	Rep. Ch. 136, Sec. 1, L. 1961	Ch.	Sec.	Herein
163	1	Rep. Ch. 158, Sec. 11, L. 1959	1	1	Rep. Ch. 156, Sec. 11, L. 1965
164	1-4	Rep. Ch. 5, Sec. 496, L. 1971	10	1-10	Rep. Ch. 197, Sec. 12-109, L. 1965
175	1	Rep. Ch. 122, Sec. 12, L. 1965		13-16	Rep. Ch. 197, Sec. 12-109, L. 1965
186	1	Rep. Ch. 213, Sec. 9, L. 1963		18	Rep. Ch. 197, Sec. 12-109, L. 1965
192	2	Rep. Ch. 194, Sec. 13, L. 1967	12	1	Rep. Ch. 5, Sec. 496, L. 1971
	4	Rep. Ch. 194, Sec. 13, L. 1967		2	Rep. Ch. 75, Sec. 1, L. 1961
195	1-23	Rep. Ch. 250, Sec. 24, L. 1963	17	1	Rep. Ch. 5, Sec. 496, L. 1971
197	7	Rep. Ch. 177, Sec. 51, L. 1965	1923		
210	2	Rep. Ch. 13, Sec. 84, L. 1961	Ch.	Sec.	Herein
225	1	Rep. Ch. 13, Sec. 84, L. 1961	4	1-6	Rep. Ch. 5, Sec. 496, L. 1971
	2	S. M.R.App.Civ.P.	14	1	Rep. Ch. 5, Sec. 496, L. 1971
	3-4	S. M.R.App.Civ.P., Rules 9, 10, 25	18	1	Rep. Ch. 5, Sec. 496, L. 1971
	7	Rep. Ch. 13, Sec. 84, L. 1961	22	1	Rep. Ch. 314, Sec. 14, L. 1969
	8	S. M.R.Civ.P., Rule 59(d)	24	1-6	Rep. Ch. 197, Sec. 223, L. 1967
	9	S. M.R.App.Civ.P., Rules 9, 10, 25	32	1	Rep. Ch. 264, Sec. 10-102, L. 1963
	10	S. M.R.App.Civ.P., Rule 1	34	1-4	Rep. Ch. 5, Sec. 496, L. 1971
	11	S. M.R.App.Civ.P., Rule 5	42	1	Rep. Ch. 199, Sec. 101, L. 1965
	13-14	S. M.R.App.Civ.P., Rules 9, 10, 25	43	1-2	Rep. Ch. 368, Sec. 248, L. 1969
	15-18	Rep. Ch. 196, Sec. 2, L. 1967	49	1	Rep. Ch. 127, Sec. 1, L. 1967; Ch. 2, Sec. 63, L. 1971
229	1-2	Rep. Ch. 177, Sec. 51, L. 1965	55	1	Rep. Ch. 189, Sec. 2, L. 1963
	3-4	Rep. Ch. 68, Sec. 10, L. 1967	56	1	Rep. Ch. 260, Sec. 12, L. 1967
235	1	Rep. Ch. 368, Sec. 248, L. 1969			
240	1, 2	Rep. Ch. 5, Sec. 496, L. 1971			
246	1-4	Rep. Ch. 368, Sec. 248, L. 1969			
256	1-3	Rep. Ch. 307, Sec. 27, L. 1967			

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61	1	Rep. Ch. 44, Sec. 7, L. 1961	34	1	Rep. Ch. 197, Sec. 223, L. 1967
77	17	Rep. Ch. 56, Sec. 1, L. 1969	39	1	S. M.R.App.Civ.P., Rule 5
	20-21	Rep. Ch. 38, Sec. 2, L. 1963	40	1-2	Rep. Ch. 250, Sec. 24, L. 1963
100	1	Rep. Ch. 264, Sec. 10-102, L. 1963	41	1	Rep. Ch. 127, Sec. 1, L. 1967; Ch. 2, Sec. 63, L. 1971
104	1	Rep. Ch. 75, Sec. 1, L. 1961; Ch. 5, Sec. 496, L. 1971	55	1	Rep. Ch. 300, Sec. 143, L. 1967
110	1-8	Rep. Ch. 147, Sec. 242, L. 1963	58	1	Rep. Ch. 368, Sec. 248, L. 1969
112	1-3	Rep. Ch. 198, Sec. 98, L. 1967	62	1	Rep. Ch. 5, Sec. 496, L. 1971
122	1	Rep. Ch. 5, Sec. 496, L. 1971	64	1	Rep. Ch. 368, Sec. 248, L. 1969
123	1	Rep. Ch. 5, Sec. 496, L. 1971	66	1-3	Rep. Ch. 2, Sec. 63, L. 1971
128	1-7	Rep. Ch. 5, Sec. 496, L. 1971	82	1	Rep. Ch. 5, Sec. 496, L. 1971
131	8(1)	Rep. Ch. 5, Sec. 496, L. 1971	88	1	Rep. Ch. 79, Sec. 1, L. 1961
133	1-2	Rep. Ch. 368, Sec. 248, L. 1969	105	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
143	1	Rep. Ch. 264, Sec. 10-102, L. 1963	106	1	Rep. Ch. 194, Sec. 13, L. 1967
145	1	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967	109	6	Rep. Ch. 97, Sec. 32, L. 1961
148	1	Rep. Ch. 264, Sec. 10-102, L. 1963	113	14	Rep. Ch. 256, Sec. 5, L. 1965
151	1-3	Rep. Ch. 368, Sec. 248, L. 1969	114	1	Rep. Ch. 75, Sec. 5, L. 1967
164	1-8	Rep. Ch. 310, Sec. 1, L. 1969	115	1	Rep. Ch. 99, Sec. 43, L. 1969
1925			116	1	Rep. Ch. 264, Sec. 10-102, L. 1963
			118	1	Rep. Ch. 368, Sec. 248, L. 1969
Ch.	Sec.	Herein	120	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
1	1-3	Rep. Ch. 305, Sec. 2, L. 1967	126	1-2	Rep. Ch. 199, Sec. 101, L. 1965
4	1	Rep. Ch. 196, Sec. 2, L. 1967		3	Rep. Ch. 266, Sec. 82, L. 1963
6	1-3	Rep. Ch. 152, Sec. 3, L. 1971	128	1	Rep. Ch. 197, Sec. 12-109, L. 1965
12	1-2	Rep. Ch. 368, Sec. 248, L. 1969	129	1	Rep. Ch. 197, Sec. 12-109, L. 1965
13	1	Rep. Ch. 197, Sec. 12-109, L. 1965	144	1-2	Rep. Ch. 147, Sec. 242, L. 1963
15	1	Rep. Ch. 368, Sec. 248, L. 1969	145	1	Rep. Ch. 264, Sec. 10-102, L. 1963
16	1	Rep. Ch. 368, Sec. 248, L. 1969	146	1	S. M.R.App.Civ.P., Rules 9, 10, 25
19	1	S. M.R.App.Civ.P., Rules 9, 10, 25	148	1	Unconstitutional, 134 M 355, 332 P 2d 501
27	1-2	Rep. Ch. 300, Sec. 143, L. 1967	149	1	Rep. Ch. 266, Sec. 82, L. 1963
28	1-2	Rep. Ch. 300, Sec. 143, L. 1967	151	1	Rep. Ch. 5, Sec. 496, L. 1971

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160	1-5	Rep. Ch. 2, Sec. 63, L. 1971		30	Rep. Ch. 257, Sec. 10, L. 1965
185	1-4	S. Ch. 137, L. 1949		74	Rep. Ch. 184, Sec. 8, L. 1961
1927				77	Rep. Ch. 184, Sec. 8, L. 1961
Ch.	Sec.	Herein	Ch.	Sec.	Herein
3	1	Rep. Ch. 368, Sec. 248, L. 1969	62	1	Rep. Ch. 368, Sec. 248, L. 1969
4	1	Rep. Ch. 189, Sec. 2, L. 1959	68	1	Rep. Ch. 338, Sec. 43, L. 1969
5	1	Rep. Ch. 300, Sec. 143, L. 1967	77	2	Rep. Ch. 5, Sec. 496, L. 1971
6	1, 2	Rep. Ch. 2, Sec. 63, L. 1971	82	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
7	1	Rep. Ch. 368, Sec. 248, L. 1969	87	1	Rep. Ch. 5, Sec. 496, L. 1971
8	1-7	Rep. Ch. 228, Sec. 8, L. 1967	89	59	Rep. Ch. 129, Sec. 1, L. 1963
14	1	Rep. Ch. 368, Sec. 248, L. 1969		73	Rep. Ch. 256, Sec. 6, L. 1971
17	1, 2	Rep. Ch. 369, Sec. 20, L. 1969		80-81	Rep. Ch. 264, Sec. 10-102, L. 1963
18	1	Rep. Ch. 197, Sec. 12-109, L. 1965		89-90	Rep. Ch. 264, Sec. 10-102, L. 1963
	2	Rep. Ch. 42, Sec. 2, L. 1961		116	Rep. Ch. 264, Sec. 10-102, L. 1963
	3	Rep. Ch. 197, Sec. 12-109, L. 1965	90	1	Rep. Ch. 129, Sec. 1, L. 1963
19	1	Rep. Ch. 369, Sec. 20, L. 1969	95	5-7	Rep. Ch. 147, Sec. 4, L. 1971
	3	Rep. Ch. 369, Sec. 20, L. 1969	98	1	Rep. Ch. 368, Sec. 248, L. 1969
	4-8	Rep. Ch. 369, Sec. 20, L. 1969	102	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965
	9-12	Rep. Ch. 369, Sec. 20, L. 1969	103	12	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
	13	Rep. Ch. 197, Sec. 12- 109, L. 1965	104	3	Rep. Ch. 99, Sec. 43, L. 1969
	15	Rep. Ch. 369, Sec. 20, L. 1969	108	9	Rep. Ch. 164, Sec. 1, L. 1969
20	1	Rep. Ch. 99, Sec. 43, L. 1969	109	1-2	Rep. Ch. 153, Sec. 14, L. 1965
31	1	Rep. Ch. 300, Sec. 143, L. 1967		3	Rep. Ch. 174, Sec. 16, L. 1961
49	1	Rep. Ch. 114, Sec. 1, L. 1971		6-7b	Rep. Ch. 174, Sec. 16, L. 1961
51	1	Rep. Ch. 147, Sec. 242, L. 1963	112	1-3	Rep. Ch. 1, Sec. 4, L. 1965
53	1	Rep. Ch. 5, Sec. 496, L. 1971	115	1-5	Rep. Ch. 5, Sec. 496, L. 1971
59	19	Rep. Ch. 56, Sec. 1, L. 1969	118	1-4	Rep. Ch. 5, Sec. 496, L. 1971
	23-24	Rep. Ch. 38, Sec. 2, L. 1963	124	2	Rep. Ch. 99, Sec. 43, L. 1969
	27	Rep. Ch. 38, Sec. 2, L. 1963		3	Rep. Ch. 147, Sec. 242, L. 1963
			125	1	Rep. Ch. 368, Sec. 248, L. 1969

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126	1	Rep. Ch. 368, Sec. 248, L. 1969	87	1	S. M.R.App.Civ.P., Rule 1
	2	Rep. Ch. 156, Sec. 11, L. 1965	92	4	Rep. Ch. 369, Sec. 20, L. 1969
	8	Rep. Ch. 368, Sec. 248, L. 1969	93	29-30	Rep. Ch. 99, Sec. 43, L. 1969
	6-7	Rep. Ch. 156, Sec. 11, L. 1965	94	1-6	Rep. Ch. 232, Sec. 9, L. 1961
138	1	Rep. Ch. 5, Sec. 496, L. 1971	95	1	Rep. Ch. 2, Sec. 63, L. 1971
147	1-32	Rep. Ch. 5, Sec. 496, L. 1971	96	1	Rep. Ch. 129, Sec. 1, L. 1963
149	2	Rep. Ch. 271, Sec. 33, L. 1963	102	2	Rep. Ch. 5, Sec. 496, L. 1971
	4	Rep. Ch. 271, Sec. 33, L. 1963	103	1	Rep. Ch. 196, Sec. 15, L. 1965
151	1-3	Rep. Ch. 202, Sec. 3, L. 1959	104	10	Rep. Ch. 177, Sec. 51, L. 1965
152	1-4	Rep. Ch. 15, Sec. 1, L. 1959	105	1-28	Rep. Ch. 236, Sec. 30, L. 1963
1929			109	1	Rep. Ch. 5, Sec. 496, L. 1971
Ch.	Sec.	Herein	110	1	Rep. Ch. 361, Sec. 7, L. 1969
21	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	114	1	Rep. Ch. 300, Sec. 143, L. 1967
25	1	Rep. Ch. 368, Sec. 248, L. 1969	117	1-4	Rep. Ch. 300, Sec. 143, L. 1967
27	8	Rep. Ch. 177, Sec. 51, L. 1965	118	1	Rep. Ch. 5, Sec. 496, L. 1971
34	1	Rep. Ch. 368, Sec. 248, L. 1969	121	1-6	Rep. Ch. 101, Sec. 1, L. 1959
59	1	Rep. Ch. 197, Sec. 12-109, L. 1965	123	1	Rep. Ch. 5, Sec. 496, L. 1971
60	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	124	2	Rep. Ch. 229, Sec. 14, L. 1967
64	4	Rep. Ch. 25, Sec. 1, L. 1971	144	1	Rep. Ch. 5, Sec. 496, L. 1971
65	1	Rep. Ch. 5, Sec. 496, L. 1971	146	1	Rep. Ch. 5, Sec. 496, L. 1971
67	1	Rep. Ch. 368, Sec. 248, L. 1969	149	1	Rep. Ch. 199, Sec. 101, L. 1965
70	4-5	Rep. Ch. 147, Sec. 242, L. 1963	151	4-7	Rep. Ch. 44, Sec. 7, L. 1961
	10	Rep. Ch. 147, Sec. 242, L. 1963	167	1	Rep. Ch. 256, Sec. 6, L. 1971
73	2	Rep. Ch. 307, Sec. 27, L. 1967	168	1	Rep. Ch. 369, Sec. 20, L. 1969
77	1	Rep. Ch. 5, Sec. 496, L. 1971	173	1-5	Rep. Ch. 15, Sec. 1, L. 1959
80	1-6	Rep. Ch. 197, Sec. 223, L. 1967	175	1	Rep. Ch. 369, Sec. 20, L. 1969
81	1	Rep. Ch. 197, Sec. 12-109, L. 1965	176	1	Rep. Ch. 197, Sec. 12-109, L. 1965
82	1-2	Rep. Ch. 199, Sec. 101, L. 1965	177	4	Rep. Ch. 197, Sec. 1, L. 1959
83	1	Rep. Ch. 202, Sec. 3, L. 1959	178	1	Rep. Ch. 197, Sec. 12-109, L. 1965
			179	1-5	Rep. Ch. 251, Sec. 28, L. 1961

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Ch.	Sec.	Herein			
6	4	Rep. Ch. 369, Sec. 20, L. 1969	110	1	Rep. Ch. 174, Sec. 16, L. 1961
8	1-2	Rep. Ch. 300, Sec. 143, L. 1967	116	1-5	Rep. Ch. 300, Sec. 143, L. 1967
9	1	Rep. Ch. 147, Sec. 242, L. 1963	118	1-3	Rep. Ch. 197, Sec. 223, L. 1967
19	1	Rep. Ch. 5, Sec. 496, L. 1971	122	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971	129	1	Rep. Ch. 205, Sec. 1, L. 1969
25	1	Rep. Ch. 5, Sec. 496, L. 1971	136	1	Rep. Ch. 196, Sec. 2, L. 1967
32	1	Rep. Ch. 260, Sec. 12, L. 1967	144	1	Rep. Ch. 197, Sec. 12-109, L. 1965
33	1	Rep. Ch. 300, Sec. 143, L. 1967	146	1-6	Rep. Ch. 5, Sec. 496, L. 1971
35	1	Rep. Ch. 300, Sec. 143, L. 1967		8-10	Rep. Ch. 5, Sec. 496, L. 1971
38	1-4	Rep. Ch. 300, Sec. 143, L. 1967		12-26	Rep. Ch. 5, Sec. 496, L. 1971
39	7	Rep. Ch. 99, Sec. 43, L. 1969	147	1	Rep. Ch. 5, Sec. 496, L. 1971
40	1-2	Rep. Ch. 300, Sec. 143, L. 1967	148	1	Rep. Ch. 5, Sec. 496, L. 1971
42	1	Rep. Ch. 300, Sec. 143, L. 1967		3-13	Rep. Ch. 5, Sec. 496, L. 1971
45	1	Rep. Ch. 300, Sec. 143, L. 1967		15-17	Rep. Ch. 5, Sec. 496, L. 1971
46	1	Rep. Ch. 264, Sec. 10-102, L. 1963		19-43	Rep. Ch. 5, Sec. 496, L. 1971
47	1	Rep. Ch. 300, Sec. 143, L. 1967		45-79	Rep. Ch. 5, Sec. 496, L. 1971
52	1-2	Rep. Ch. 300, Sec. 143, L. 1967		81	Rep. Ch. 5, Sec. 496, L. 1971
59	1	Rep. Ch. 13, Sec. 84, L. 1961		83-85	Rep. Ch. 5, Sec. 496, L. 1971
60	1	Rep. Ch. 199, Sec. 101, L. 1965		95-104	Rep. Ch. 5, Sec. 496, L. 1971
70	2-3	Rep. Ch. 189, Sec. 2, L. 1963		105	Rep. Ch. 318, Sec. 1, L. 1969
72	1	Rep. Ch. 5, Sec. 496, L. 1971		106-110	Rep. Ch. 5, Sec. 496, L. 1971
75	1	S. Ch. 137, L. 1949	150	1	Rep. Ch. 196, Sec. 2, L. 1967
81	1	Rep. Ch. 147, Sec. 4, L. 1971	151	1-8	Rep. Ch. 199, Sec. 101, L. 1965
84	1	Rep. Ch. 5, Sec. 496, L. 1971	153	1-11	Rep. Ch. 55, Sec. 3, L. 1965
90	1	Rep. Ch. 5, Sec. 496, L. 1971	156	1	Rep. Ch. 199, Sec. 101, L. 1965
93	1	Rep. Ch. 197, Sec. 223, L. 1967	164	1	Rep. Ch. 5, Sec. 496, L. 1971
100	1, Subd. 29	Rep. Ch. 136, Sec. 6, L. 1971	169	1-6	Rep. Ch. 300, Sec. 143, L. 1967
105	6	Rep. Ch. 93, Sec. 44, L. 1969		7A	Rep. Ch. 300, Sec. 143, L. 1967
106	1-4	Rep. Ch. 264, Sec. 10-102, L. 1963	170	1	Rep. Ch. 300, Sec. 143, L. 1967
107	1	Rep. Ch. 264, Sec. 10-102, L. 1963	175	1	Rep. Ch. 369, Sec. 20, L. 1969
			176	2	Rep. Ch. 80, Sec. 14, L. 1961

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179	1	Rep. Ch. 197, Sec. 12-109, L. 1965	105	18-27	Rep. Ch. 154, Sec. 17, L. 1965
184	4	Rep. Ch. 201, Sec. 7, L. 1961		52	Rep. Ch. 154, Sec. 17, L. 1965
	6	Rep. Ch. 201, Sec. 7, L. 1961		57	Rep. Ch. 154, Sec. 17, L. 1965
188	2	Rep. Ch. 197, Sec. 12-109, L. 1965		60-61	Rep. Ch. 154, Sec. 17, L. 1965
192	1	Rep. Ch. 174, Sec. 16, L. 1961		63	Rep. Ch. 154, Sec. 17, L. 1965
194	1-3	Rep. Ch. 251, Sec. 28, L. 1961		96	Rep. Ch. 147, Sec. 242, L. 1963
196	1	Rep. Ch. 15, Sec. 1, L. 1959	110	1	Rep. Ch. 174, Sec. 16, L. 1961
	2	Rep. Ch. 199, Sec. 101, L. 1965	126	1-6	Rep. Ch. 101, Sec. 1, L. 1959
1933			134	1	S. Ch. 137, L. 1949
Ch.	Sec.	Herein	146	1	Rep. Ch. 80, Sec. 14, L. 1961
2	1	Rep. Ch. 197, Sec. 12-109, L. 1965	148	2	Rep. Ch. 314, Sec. 14, L. 1969
4	1	Rep. Ch. 368, Sec. 248, L. 1969	153	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965
6	1	Rep. Ch. 368, Sec. 248, L. 1969	157	1-4	Rep. Ch. 369, Sec. 20, L. 1969
7	1	Rep. Ch. 250, Sec. 24, L. 1963	162	1	Rep. Ch. 5, Sec. 496, L. 1971
9	1	Rep. Ch. 5, Sec. 496, L. 1971	163	1	Rep. Ch. 5, Sec. 496, L. 1971
15	1	Rep. Ch. 368, Sec. 248, L. 1969	167	1-3	Rep. Ch. 158, Sec. 11, L. 1959
16	2	Rep. Ch. 5, Sec. 496, L. 1971	168	1	Rep. Ch. 99, Sec. 43, L. 1969
	4	Rep. Ch. 5, Sec. 496, L. 1971	170	1	Rep. Ch. 369, Sec. 20, L. 1969
26	1	Rep. Ch. 197, Sec. 223, L. 1967	173	1	Rep. Ch. 366, Sec. 27, L. 1969
28	1	Rep. Ch. 368, Sec. 248, L. 1969	175	1	Rep. Ch. 5, Sec. 496, L. 1971
31	2	Rep. Ch. 99, Sec. 43, L. 1969	178	1-7	Rep. Ch. 5, Sec. 496, L. 1971
34	1	Rep. Ch. 13, Sec. 84, L. 1961		9, 10	Rep. Ch. 5, Sec. 496, L. 1971
37	1	Rep. Ch. 5, Sec. 496, L. 1971		12-18	Rep. Ch. 5, Sec. 496, L. 1971
46	1-7	Rep. Ch. 118, Sec. 32, L. 1969		20-26	Rep. Ch. 5, Sec. 496, L. 1971
	9-12	Rep. Ch. 118, Sec. 32, L. 1969		27	Rep. Ch. 151, Sec. 8, L. 1961
47	1-8	Rep. Ch. 251, Sec. 28, L. 1961		28, 29	Rep. Ch. 5, Sec. 496, L. 1971
61	1-2	Rep. Ch. 368, Sec. 248, L. 1969		31	Rep. Ch. 5, Sec. 496, L. 1971
			183	1	Rep. Ch. 5, Sec. 496, L. 1971
			188	1-11	Rep. Ch. 368, Sec. 248, L. 1969

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34	1	Rep. Ch. 5, Sec. 496, L. 1971	103	1	Rep. Ch. 13, Sec. 84, L. 1961
35	1	Rep. Ch. 158, Sec. 7, L. 1967	107	1	Rep. Ch. 197, Sec. 12-109, L. 1965
1935			112	1	Rep. Ch. 264, Sec. 10-102, L. 1963
Ch.	Sec.	Herein	115	1	Rep. Ch. 5, Sec. 496, L. 1971
3	1	Rep. Ch. 368, Sec. 248, L. 1969	116	1	Rep. Ch. 369, Sec. 20, L. 1969
6	1	Rep. Ch. 1, Sec. 4, L. 1965		2	Rep. Ch. 60, Sec. 1, L. 1969; Ch. 369, Sec. 20, L. 1969
12	1	Rep. Ch. 199, Sec. 101, L. 1965	127	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
25	1	Rep. Ch. 368, Sec. 248, L. 1969		3-6	Rep. Ch. 184, Sec. 8, L. 1961
26	1-7	S. Ch. 137, L. 1949	144	1-3	Rep. Ch. 5, Sec. 496, L. 1971
27	1-7	Rep. Ch. 368, Sec. 248, L. 1969	145	1	Rep. Ch. 300, Sec. 143, L. 1967
28	1	Rep. Ch. 2, Sec. 63, L. 1971	147	2	Rep. Ch. 174, Sec. 16, L. 1961
31	1	Rep. Ch. 368, Sec. 248, L. 1969	167	1	Rep. Ch. 56, Sec. 1, L. 1969
33	1	Rep. Ch. 368, Sec. 248, L. 1969	169	7	Rep. Ch. 147, Sec. 242, L. 1963
40	1	Rep. Ch. 5, Sec. 496, L. 1971	176	1-9	Rep. Ch. 19, Sec. 10, L. 1967
42	1	Rep. Ch. 196, Sec. 2, L. 1967	180	1-6	Rep. Ch. 199, Sec. 101, L. 1965
45	1	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967	182	1-11	Rep. Ch. 368, Sec. 248, L. 1969
53	1	Rep. Ch. 196, Sec. 2, L. 1967		13	Rep. Ch. 368, Sec. 248, L. 1969
54	1	Rep. Ch. 196, Sec. 2, L. 1967		14	Rep. Ch. 20, Sec. 3, L. 1959
57	2	Rep. Ch. 202, Sec. 3, L. 1959		15	Rep. Ch. 368, Sec. 248, L. 1969
59	1	Rep. Ch. 266, Sec. 82, L. 1963	193	1	Rep. Ch. 5, Sec. 496, L. 1971
64	1	Rep. Ch. 205, Sec. 2, L. 1971	198	1-5	Rep. Ch. 199, Sec. 101, L. 1965
65	2	Rep. Ch. 147, Sec. 242, L. 1963	1937		
67	1-7	Rep. Ch. 55, Sec. 3, L. 1965	Ch.	Sec.	Herein
71	1	Rep. Ch. 368, Sec. 248, L. 1969	2	1	Rep. Ch. 368, Sec. 248, L. 1969
84	2	Rep. Ch. 99, Sec. 43, L. 1969	3	1	Rep. Ch. 154, Sec. 17, L. 1965
90	1-3	Rep. Ch. 118, Sec. 32, L. 1969	7	1	Rep. Ch. 5, Sec. 496, L. 1971
94	1	Rep. Ch. 15, Sec. 1, L. 1959	8	1	Rep. Ch. 13, Sec. 84, L. 1961
100	3	Rep. Ch. 6, Sec. 2, Ex. L. 1969	10	4	Rep. Ch. 189, Sec. 2, L. 1963
			31	1	Rep. Ch. 300, Sec. 143, L. 1967

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33	1	Rep. Ch. 80, Sec. 14, L. 1961	172	1-6	Rep. Ch. 368, Sec. 248, L. 1969
40	2-3	Rep. Ch. 82, Sec. 4, L. 1961	176	1-26	Rep. Ch. 314, Sec. 14, L. 1969
42	1-11	Unconstitutional, 139 M 15, 359 P 2d 644		28	Rep. Ch. 314, Sec. 14, L. 1969
44	1	Rep. Ch. 1, Sec. 4, L. 1965		30	Rep. Ch. 314, Sec. 14, L. 1969
46	2	Rep. Ch. 158, Sec. 11, L. 1959	181	1	Rep. Ch. 368, Sec. 248, L. 1969
	4	Rep. Ch. 80, Sec. 14, L. 1961	184	1	Rep. Ch. 196, Sec. 2, L. 1967
50	1-2	Rep. Ch. 1, Sec. 4, L. 1965	185	1	Rep. Ch. 300, Sec. 143, L. 1967
57	1	Rep. Ch. 5, Sec. 496, L. 1971	186	1	Rep. Ch. 5, Sec. 496, L. 1971
58	1	Rep. Ch. 2, Sec. 63, L. 1971	187	1-5	Rep. Ch. 196, Sec. 2, L. 1967
61	1	Rep. Ch. 368, Sec. 248, L. 1969		7	Rep. Ch. 196, Sec. 2, L. 1967
81	1	Rep. Ch. 205, Sec. 2, L. 1971	192	1	Rep. Ch. 361, Sec. 7, L. 1969
86	1-11	Rep. Ch. 72, Sec. 1, L. 1959	194	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
87	1-10	Rep. Ch. 5, Sec. 496, L. 1971	196	1-2	Rep. Ch. 199, Sec. 101, L. 1965
	12-14	Rep. Ch. 5, Sec. 496, L. 1971	198	1	Rep. Ch. 300, Sec. 143, L. 1967
	16	Rep. Ch. 5, Sec. 496, L. 1971	203	1	Rep. Ch. 368, Sec. 248, L. 1969
88	1	Rep. Ch. 198, Sec. 98, L. 1967	204	1-7	Rep. Ch. 81, Sec. 1, L. 1959
96	1	Rep. Ch. 369, Sec. 20, L. 1969	1939		
102	1	Rep. Ch. 197, Sec. 12-109, L. 1965	Ch.	Sec.	Herein
106	1	Rep. Ch. 118, Sec. 32, L. 1969	14	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
110	1	Rep. Ch. 5, Sec. 496, L. 1971	20	1	Rep. Ch. 5, Sec. 496, L. 1971
112	1	Rep. Ch. 368, Sec. 248, L. 1969	23	1	Rep. Ch. 1, Sec. 4, L. 1965
118	1-23	Rep. Ch. 280, Sec. 10, L. 1967	28	1	Rep. Ch. 13, Sec. 84, L. 1961
120	1	Rep. Ch. 251, Sec. 28, L. 1961	34	1	Rep. Ch. 25, Sec. 1, L. 1971
137	15(d)	Rep. Ch. 156, Sec. 9, L. 1961	35	1	Rep. Ch. 197, Sec. 12-109, L. 1965
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147	1	Rep. Ch. 368, Sec. 248, L. 1969		3	Rep. Ch. 197, Sec. 12-109, L. 1965
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158	1	Rep. Ch. 5, Sec. 496, L. 1971		5	Effective Date
161	1	Rep. Ch. 177, Sec. 51, L. 1965	38	3	Rep. Ch. 129, Sec. 1, L. 1963
165	1	Rep. Ch. 5, Sec. 496, L. 1971	40	1	Rep. Ch. 196, Sec. 2, L. 1967
171	1	Rep. Ch. 13, Sec. 84, L. 1961	60	1	Rep. Ch. 300, Sec. 143, L. 1967

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61	1	Rep. Ch. 13, Sec. 84, L. 1961	159	1	Rep. Ch. 5, Sec. 496, L. 1971
63	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965	160	1-7	Rep. Ch. 250, Sec. 14, L. 1969
66	1	Rep. Ch. 68, Sec. 10, L. 1967	166	1	Rep. Ch. 5, Sec. 496, L. 1971
67	1	Rep. Ch. 369, Sec. 20, L. 1969	170	1	Rep. Ch. 194, Sec. 13, L. 1967
70	1-3	Rep. Ch. 5, Sec. 496, L. 1971	172	23	Rep. Ch. 264, Sec. 10-102, L. 1963
78	2-6	Rep. Ch. 5, Sec. 496, L. 1971	177	3	Rep. Ch. 44, Sec. 7, L. 1961
81	1-2	Rep. Ch. 368, Sec. 248, L. 1969		5-8	Rep. Ch. 44, Sec. 7, L. 1961
83	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	178	1-7	Rep. Ch. 5, Sec. 496, L. 1971
84	1	Rep. Ch. 368, Sec. 248, L. 1969	180	1	Rep. Ch. 129, Sec. 1, L. 1963
88	2-3	Rep. Ch. 361, Sec. 7, L. 1969	183	1-5	Rep. Ch. 55, Sec. 3, L. 1965
92	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	186	1	Rep. Ch. 13, Sec. 84, L. 1961
103	1-3	Rep. Ch. 163, Sec. 1, L. 1959	195	5-8	Rep. Ch. 185, Sec. 3, L. 1969
106	1	Rep. Ch. 5, Sec. 496, L. 1971	202	1-4	Rep. Ch. 5, Sec. 496, L. 1971
117	9	Rep. Ch. 213, Sec. 9, L. 1963	204	12	Rep. Ch. 192, Sec. 14, L. 1959
127	1-8	Rep. Ch. 197, Sec. 223, L. 1967		19	Rep. Ch. 192, Sec. 14, L. 1959
131	1	Rep. Ch. 271, Sec. 33, L. 1963	206	1	Rep. Ch. 5, Sec. 496, L. 1971
	3-4	Rep. Ch. 271, Sec. 33, L. 1963	207	1	Rep. Ch. 5, Sec. 496, L. 1971
	5	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	208	28	Rep. Ch. 147, Sec. 242, L. 1963
132	5-6	Rep. Ch. 260, Sec. 12, L. 1967	213	1	Rep. Ch. 197, Sec. 12-109, L. 1965
144	1	Rep. Ch. 194, Sec. 13, L. 1967	215	1-4	Rep. Ch. 5, Sec. 496, L. 1971
146	1-2	Rep. Ch. 99, Sec. 43, L. 1969	217	1-4	Rep. Ch. 5, Sec. 496, L. 1971
	3	Rep. Ch. 147, Sec. 242, L. 1963	222	9	Rep. Ch. 177, Sec. 51, L. 1965
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	11	Rep. Ch. 160, Sec. 24, L. 1965	Ch.	Sec.	Herein
	12	Rep. Ch. 99, Sec. 43, L. 1969	2	1	Rep. Ch. 320, Sec. 9, L. 1971
	13	Rep. Ch. 160, Sec. 24, L. 1965	3	1	Rep. Ch. 264, Sec. 10-102, L. 1963
14-24	Rep. Ch. 99, Sec. 43, L. 1969		5	1	71-1001 to 71-1008
	25	Rep. Ch. 160, Sec. 24, L. 1965		2	Repealing Clause
26-31	Rep. Ch. 99, Sec. 43, L. 1969			3	Effective Date
158	1-12	Rep. Ch. 274, Sec. 20, L. 1965	7	1-3	Rep. Ch. 181, Sec. 7, L. 1971

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19	1	S. M.R.App.Civ.P., Rules 9, 10, 25	111	1	Rep. Ch. 197, Sec. 12-109, L. 1965
27	1	Rep. Ch. 99, Sec. 43, L. 1969	115	1	Rep. Ch. 199, Sec. 1, L. 1961
31	1	Rep. Ch. 5, Sec. 496, L. 1971	125	1	Rep. Ch. 196, Sec. 2, L. 1967
32	1	Rep. Ch. 368, Sec. 248, L. 1969	138	2-10	Rep. Ch. 5, Sec. 496, L. 1971
34	1, 2	Rep. Ch. 147, Sec. 4, L. 1971	144	1	Rep. Ch. 368, Sec. 248, L. 1969
36	1	Rep. Ch. 264, Sec. 10-102, L. 1963	146	1-3	Rep. Ch. 314, Sec. 14, L. 1969
37	1-4	Rep. Ch. 194, Sec. 13, L. 1967	152	1-14	Rep. Ch. 5, Sec. 496, L. 1971
41	1	S. M.R.App.Civ.P., Rule 1	164	9(d)	Rep. Ch. 156, Sec. 9, L. 1961
44	1	Rep. Ch. 368, Sec. 248, L. 1969	1943		
49	1	Rep. Ch. 5, Sec. 496, L. 1971	Ch.	Sec.	Herein
	2	Rep. Ch. 252, Sec. 2, L. 1967	1	1-2	Rep. Ch. 1, Sec. 4, L. 1965
51	1	Rep. Ch. 368, Sec. 248, L. 1969	3	1-2	Rep. Ch. 1, Sec. 4, L. 1965
53	1	Rep. Ch. 300, Sec. 143, L. 1967	9	1	Rep. Ch. 67, Sec. 11, L. 1967
56	1-9	Temporary	10	3	Rep. Ch. 213, Sec. 9, L. 1963
63	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	11	1	Rep. Ch. 199, Sec. 101, L. 1965
64	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	12	1	Rep. Ch. 2, Sec. 63, L. 1971
65	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	17	1-2	Rep. Ch. 13, Sec. 84, L. 1961
66	1-4	Rep. Ch. 197, Sec. 223, L. 1967	19	1-4	Rep. Ch. 368, Sec. 248, L. 1969
67	1-9	Rep. Ch. 41, Sec. 24, L. 1963	24	1-2	Rep. Ch. 32, Sec. 1, L. 1953
	11-12	Rep. Ch. 41, Sec. 24, L. 1963		4-5	Rep. Ch. 32, Sec. 1, L. 1953
68	1	Rep. Ch. 205, Sec. 2, L. 1971	31	1	Rep. Ch. 280, Sec. 10, L. 1967
70	1-15	Rep. Ch. 197, Sec. 223, L. 1967	32	2	Rep. Ch. 199, Sec. 101, L. 1965
72	1	Rep. Ch. 300, Sec. 143, L. 1967	40	1-2	Rep. Ch. 368, Sec. 248, L. 1969
81	1	Rep. Ch. 177, Sec. 51, L. 1965	44	1-36	Rep. Ch. 197, Sec. 223, L. 1967
85	1	Rep. Ch. 368, Sec. 248, L. 1969		38-39	Rep. Ch. 197, Sec. 223, L. 1967
93	1-6	Rep. Ch. 320, Sec. 9, L. 1971	45	1	Rep. Ch. 32, Sec. 1, L. 1953
	9	Rep. Ch. 320, Sec. 9, L. 1971	61	1	Rep. Ch. 5, Sec. 496, L. 1971
97	1	Rep. Ch. 199, Sec. 101, L. 1965	63	1	Rep. Ch. 369, Sec. 20, L. 1969
101	1	Rep. Ch. 5, Sec. 496, L. 1971	65	1	Rep. Ch. 368, Sec. 248, L. 1969
102	1	Rep. Ch. 264, Sec. 10-102, L. 1963			
110	1	Rep. Ch. 13, Sec. 84, L. 1961			

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66	1	Rep. Ch. 5, Sec. 496, L. 1971	151	1	Rep. Ch. 41, Sec. 24, L. 1963
68	1, 2	Rep. Ch. 2, Sec. 63, L. 1971	156	1	Rep. Ch. 266, Sec. 82, L. 1963
69	1	Rep. Ch. 199, Sec. 101, L. 1965		2-6	Rep. Ch. 199, Sec. 101, L. 1965
70	1-3	Rep. Ch. 264, Sec. 10-102, L. 1963	157	6	Rep. Ch. 102, Sec. 3, L. 1969
76	1	Rep. Ch. 199, Sec. 101, L. 1965		9	Rep. Ch. 213, Sec. 9, L. 1963
	3	Rep. Ch. 213, Sec. 9, L. 1963	165	3	Rep. Ch. 266, Sec. 82, L. 1963
77	1	Rep. Ch. 420, Sec. 4, L. 1971	168	1	Rep. Ch. 5, Sec. 496, L. 1971
	3	Rep. Ch. 420, Sec. 4, L. 1971	171	1	Rep. Ch. 38, Sec. 2, L. 1963
84	1	Rep. Ch. 300, Sec. 143, L. 1967	175	1	Rep. Ch. 197, Sec. 12-109, L. 1965
85	1	Rep. Ch. 5, Sec. 496, L. 1971	177	1	Rep. Ch. 368, Sec. 248, L. 1969
99	1-6	Rep. Ch. 368, Sec. 248, L. 1969	180	1	Rep. Ch. 13, Sec. 84, L. 1961
102	1-7	Rep. Ch. 197, Sec. 223, L. 1967	182	13	Rep. Ch. 147, Sec. 242, L. 1963
103	1	Rep. Ch. 5, Sec. 496, L. 1971	183	1	Rep. Ch. 266, Sec. 82, L. 1963
104	1	Rep. Ch. 368, Sec. 248, L. 1969		2	Rep. Ch. 199, Sec. 101, L. 1965
105	1	Rep. Ch. 368, Sec. 248, L. 1969		3	Rep. Ch. 266, Sec. 82, L. 1963
107	1	Rep. Ch. 199, Sec. 101, L. 1965		4-7	Rep. Ch. 199, Sec. 101, L. 1965
110	1	Rep. Ch. 199, Sec. 101, L. 1965		8-9	Rep. Ch. 213, Sec. 9, L. 1963
111	1	Rep. Ch. 305, Sec. 2, L. 1967		10-11	Rep. Ch. 199, Sec. 101, L. 1965
114	1-2	Rep. Ch. 197, Sec. 223, L. 1967		12	Rep. Ch. 213, Sec. 9, L. 1963
	3	Rep. Ch. 366, Sec. 27, L. 1969		13-16	Rep. Ch. 199, Sec. 101, L. 1965
115	1-23	Rep. Ch. 264, Sec. 10-102, L. 1963		17-18	Rep. Ch. 266, Sec. 82, L. 1963
	26	Rep. Ch. 264, Sec. 10-102, L. 1963	184	10-11	Rep. Ch. 147, Sec. 242, L. 1963
116	1	Rep. Ch. 199, Sec. 1, L. 1961		13	Rep. Ch. 147, Sec. 242, L. 1963
120	2	Rep. Ch. 147, Sec. 242, L. 1963	186	7	Rep. Ch. 5, Sec. 496, L. 1971
125	1-4	Rep. Ch. 197, Sec. 223, L. 1967	189	1-3	Rep. Ch. 5, Sec. 496, L. 1971
126	1	Rep. Ch. 107, Sec. 18, L. 1965	190	1-3	Rep. Ch. 368, Sec. 248, L. 1969
132	1-5	Rep. Ch. 338, Sec. 43, L. 1969	192	1	Rep. Ch. 5, Sec. 496, L. 1971
133	2	Rep. Ch. 148, Sec. 2, L. 1971	193	1	Rep. Ch. 5, Sec. 496, L. 1971
140	1	Rep. Ch. 13, Sec. 84, L. 1961	199	11	Rep. Ch. 102, Sec. 1, L. 1959
141	1	Rep. Ch. 300, Sec. 143, L. 1967	201	1	Rep. Ch. 5, Sec. 496, L. 1971
142	1, 2	Rep. Ch. 2, Sec. 63, L. 1971	202	1-3	Rep. Ch. 260, Sec. 12, L. 1967

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205	1	Rep. Ch. 5, Sec. 496, L. 1971	45	1	Rep. Ch. 5, Sec. 496, L. 1971
208	1-5	Rep. Ch. 5, Sec. 496, L. 1971	47	1	Rep. Ch. 5, Sec. 496, L. 1971
209	1-2	Rep. Ch. 266, Sec. 82, L. 1963	49	1	Rep. Ch. 368, Sec. 248, L. 1969
210	1	Rep. Ch. 1, Sec. 4, L. 1965	50	1	Rep. Ch. 5, Sec. 496, L. 1971
219	1	Rep. Ch. 5, Sec. 496, L. 1971	57	1	Rep. Ch. 266, Sec. 82, L. 1963
225	1-2	Rep. Ch. 197, Sec. 223, L. 1967	69	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
226	1	Rep. Ch. 38, Sec. 2, L. 1963	72	1	Rep. Ch. 199, Sec. 101, L. 1965
227	4	Rep. Ch. 262, Sec. 16, L. 1969	74	1	Rep. Ch. 42, Sec. 2, L. 1961
	8	Rep. Ch. 262, Sec. 16, L. 1969	78	1-6	Rep. Ch. 271, Sec. 33, L. 1963
	17-19	Rep. Ch. 262, Sec. 16, L. 1969	81	1	Rep. Ch. 199, Sec. 101, L. 1965
	33	Rep. Ch. 262, Sec. 16, L. 1969	86	1-7	Rep. Ch. 197, Sec. 12-109, L. 1965
228	1-10	Rep. Ch. 127, Sec. 15, L. 1963	87	1	Rep. Ch. 197, Sec. 12-109, L. 1965
233	4	Rep. Ch. 156, Sec. 9, L. 1961	91	3-4	Rep. Ch. 215, Sec. 3, L. 1965
234	1-17	Rep. Ch. 368, Sec. 248, L. 1969	92	1	Rep. Ch. 13, Sec. 84, L. 1961
1945			96	1	Rep. Ch. 199, Sec. 101, L. 1965
Ch.	Sec.	Herein	101	1	Rep. Ch. 205, Sec. 2, L. 1971
2	1-4	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	102	1	Rep. Ch. 38, Sec. 2, L. 1963
10	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	104	1	Rep. Ch. 368, Sec. 248, L. 1969
11	1	Rep. Ch. 199, Sec. 101, L. 1965	109	1	Rep. Ch. 99, Sec. 43, L. 1969
15	1	Rep. Ch. 5, Sec. 496, L. 1971	110	1-5	Rep. Ch. 99, Sec. 43, L. 1969
23	1-3	Rep. Ch. 368, Sec. 248, L. 1969	111	3	Rep. Ch. 80, Sec. 14, L. 1961
26	1	Rep. Ch. 368, Sec. 248, L. 1969		4	Rep. Ch. 177, Sec. 51, L. 1965
27	1	Rep. Ch. 368, Sec. 248, L. 1969	113	1	Unconstitutional, 246 F Supp 396
28	1-4	Rep. Ch. 368, Sec. 248, L. 1969	116	1	Rep. Ch. 5, Sec. 496, L. 1971
29	1	Rep. Ch. 196, Sec. 2, L. 1967	119	1-5	Rep. Ch. 107, Sec. 18, L. 1965
34	1	Rep. Ch. 368, Sec. 248, L. 1969	125	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
38	14	Rep. Ch. 188, Sec. 4, L. 1959	127	1-2	Rep. Ch. 197, Sec. 223, L. 1967
41	1	Rep. Ch. 262, Sec. 16, L. 1969	130	1	Rep. Ch. 5, Sec. 496, L. 1971
			131	1-5	Rep. Ch. 5, Sec. 496, L. 1971
			132	1	Rep. Ch. 5, Sec. 496, L. 1971

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135	1-5	Rep. Ch. 5, Sec. 496, L. 1971	10	1	Rep. Ch. 300, Sec. 143, L. 1967
137	1-3	Rep. Ch. 5, Sec. 496, L. 1971	15	1	Rep. Ch. 189, Sec. 2, L. 1963
147	1-19	Rep. Ch. 264, Sec. 10-102, L. 1963	16	1	Rep. Ch. 13, Sec. 84, L. 1961
148	1-8	Rep. Ch. 55, Sec. 1, L. 1959	21	1	Rep. Ch. 197, Sec. 223, L. 1967
155	1	Rep. Ch. 197, Sec. 12-109, L. 1965	22	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
158	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	26	1	Rep. Ch. 368, Sec. 248, L. 1969
	3-6	Rep. Ch. 2, Sec. 63, L. 1971	27	1	Rep. Ch. 5, Sec. 496, L. 1971
162	5, 6	Rep. Ch. 369, Sec. 20, L. 1969	28	1	Rep. Ch. 5, Sec. 496, L. 1971
166	1-10	Rep. Ch. 2, Sec. 63, L. 1971	30	1	Rep. Ch. 68, Sec. 10, L. 1967
167	1-3	Rep. Ch. 368, Sec. 248, L. 1969	31	1-11	Rep. Ch. 300, Sec. 143, L. 1967
170	1	Rep. Ch. 197, Sec. 223, L. 1967	32	1	Rep. Ch. 300, Sec. 143, L. 1967
	3	Rep. Ch. 197, Sec. 223, L. 1967	33	1	Rep. Ch. 300, Sec. 143, L. 1967
171	1-14	Rep. Ch. 197, Sec. 223, L. 1967	34	1	Rep. Ch. 300, Sec. 143, L. 1967
174	1-2	Omitted	39	1	Rep. Ch. 300, Sec. 143, L. 1967
181	1	Rep. Ch. 199, Sec. 1, L. 1961	51	1	Rep. Ch. 199, Sec. 1, L. 1961
195	1	Rep. Ch. 256, Sec. 6, L. 1971	53	1-2	Rep. Ch. 264, Sec. 10-102, L. 1963
197	1	Rep. Ch. 184, Sec. 8, L. 1961	56	1	16-1008, 16-1008A
198	1	Rep. Ch. 266, Sec. 82, L. 1963	59	1-10	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
	3-6	Rep. Ch. 266, Sec. 82, L. 1963	61	1	Rep. Ch. 260, Sec. 12, L. 1967
	8	Rep. Ch. 266, Sec. 82, L. 1963	62	1	Rep. Ch. 199, Sec. 101, L. 1965
202	1-3	Rep. Ch. 197, Sec. 223, L. 1967	68	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
203	1-4	Rep. Ch. 197, Sec. 223, L. 1967	72	1-2	Rep. Ch. 55, Sec. 3, L. 1965
204	1	Rep. Ch. 271, Sec. 33, L. 1963	75	Preamble, 1-2	Rep. Ch. 47, Sec. 14, L. 1963
	3-8	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	76	1-2	Rep. Ch. 266, Sec. 82, L. 1963
	10-11	Rep. Ch. 271, Sec. 33, L. 1963	90	1	Rep. Ch. 5, Sec. 496, L. 1971
212	18	68-701, 68-702, 68-704 to 68-709	102	1	Rep. Ch. 197, Sec. 12-109, L. 1965
213	1-6	Unconstitutional, 130 M 402, 303 P 2d 938	103	1-3	Rep. Ch. 199, Sec. 101, L. 1965

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108	1	Rep. Ch. 136, Sec. 6, L. 1971	217	1	Rep. Ch. 218, Sec. 4, L. 1957
115	1	Rep. Ch. 2, Sec. 63, L. 1971	218	1-10	Rep. Ch. 237, Sec. 28, L. 1961
117	1	Rep. Ch. 368, Sec. 248, L. 1969	220	1-13	Rep. Ch. 17, Sec. 16, L. 1967
118	1	Rep. Ch. 272, Sec. 2, L. 1959		14	Rep. Ch. 149, Sec. 4, L. 1959
130	1	Rep. Ch. 369, Sec. 20, L. 1969		15-16	Rep. Ch. 17, Sec. 16, L. 1967
135	1	Rep. Ch. 5, Sec. 496, L. 1971	221	1	Rep. Ch. 256, Sec. 5, L. 1965
137	1	Rep. Ch. 198, Sec. 98, L. 1967	222	1-3	Rep. Ch. 2, Sec. 63, L. 1971
139	1	Rep. Ch. 305, Sec. 2, L. 1967	224	15	Rep. Ch. 56, Sec. 1, L. 1969
141	1	Rep. Ch. 368, Sec. 248, L. 1969	228	1	Rep. Ch. 185, Sec. 3, L. 1969
144	1	Rep. Ch. 197, Sec. 12-109, L. 1965	232	1	Rep. Ch. 5, Sec. 496, L. 1971
145	1	Rep. Ch. 197, Sec. 12-109, L. 1965	235	1	Rep. Ch. 177, Sec. 51, L. 1965
149	1	Rep. Ch. 197, Sec. 12-109, L. 1965		8	Rep. Ch. 197, Sec. 1, L. 1959
157	1	Rep. Ch. 147, Sec. 242, L. 1963	238	1-2	16-1008A
161	1-3	Rep. Ch. 5, Sec. 496, L. 1971	240	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965
163	1	Rep. Ch. 99, Sec. 43, L. 1969	257	1	Rep. Ch. 5, Sec. 496, L. 1971
168	1	Rep. Ch. 174, Sec. 16, L. 1961		2	Rep. Ch. 366, Sec. 27, L. 1969
169	1	Rep. Ch. 5, Sec. 496, L. 1971	258	1-8	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
173	1	Rep. Ch. 68, Sec. 10, L. 1967		10	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
175	1	Rep. Ch. 251, Sec. 28, L. 1961	263	1-12	Rep. Ch. 403, Sec. 35, L. 1971
182	1	Rep. Ch. 38, Sec. 2, L. 1963	264	1	Rep. Ch. 42, Sec. 2, L. 1961
183	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	268	1	Rep. Ch. 199, Sec. 101, L. 1965
188	1	Rep. Ch. 5, Sec. 496, L. 1971	269	1-19	Rep. Ch. 197, Sec. 223, L. 1967
189	1	Rep. Ch. 197, Sec. 223, L. 1967	270	1-4	Rep. Ch. 197, Sec. 223, L. 1967
190	1-3	Rep. Ch. 2, Sec. 63, L. 1971		7	Rep. Ch. 77, Sec. 14, L. 1965
191	1	Rep. Ch. 197, Sec. 223, L. 1967		8-18	Rep. Ch. 197, Sec. 223, L. 1967
192	1-6	Rep. Ch. 162, Sec. 17, L. 1965	273	1	Rep. Ch. 5, Sec. 496, L. 1971
194	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	275	1-6	Rep. Ch. 5, Sec. 496, L. 1971
195	1, 2	Rep. Ch. 2, Sec. 63, L. 1971	276	3	Rep. Ch. 262, Sec. 16, L. 1969
203	1	Rep. Ch. 199, Sec. 101, L. 1965		8	Rep. Ch. 262, Sec. 16, L. 1969

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280	1	Rep. Ch. 5, Sec. 496, L. 1971	105	1	Rep. Ch. 197, Sec. 223, L. 1967
282	1-8	Rep. Ch. 5, Sec. 496, L. 1971	111	1	Rep. Ch. 300, Sec. 143, L. 1967
283	1-3	Rep. Ch. 198, Sec. 98, L. 1967	113	1	Rep. Ch. 154, Sec. 1, L. 1959
289	1-5	Rep. Ch. 140, Sec. 32, L. 1969	116	1	Rep. Ch. 199, Sec. 101, L. 1965
	7-23	Rep. Ch. 140, Sec. 32, L. 1969	127	1	Rep. Ch. 280, Sec. 10, L. 1967
291	1-5	Rep. Ch. 232, Sec. 9, L. 1961	128	1	Rep. Ch. 129, Sec. 1, L. 1963
295	1-7	Rep. Ch. 300, Sec. 143, L. 1967	130	1	Rep. Ch. 5, Sec. 496, L. 1971
297	6	68-701, 68-702, 68-704 to 68-709		3-5	Rep. Ch. 5, Sec. 496, L. 1971
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Ch.	Sec.	Herein	135	1	S. M.R.Civ.P., Rule 4 D
12	1	Rep. Ch. 314, Sec. 14, L. 1969	136	3	Rep. Ch. 147, Sec. 242, L. 1963
14	1	Rep. Ch. 260, Sec. 12, L. 1967	142	1-6	Rep. Ch. 5, Sec. 496, L. 1971
20	1	Rep. Ch. 272, Sec. 2, L. 1959		7	Rep. Ch. 187, Sec. 2, L. 1959; Ch. 5, Sec. 496, L. 1971
28	1-6	Rep. Ch. 5, Sec. 496, L. 1971	146	1	Rep. Ch. 5, Sec. 496, L. 1971
30	1	Rep. Ch. 3, Sec. 3, L. 1965; Ch. 2, Sec. 63, L. 1971	149	1	Rep. Ch. 264, Sec. 10-102, L. 1963
38	1	Rep. Ch. 196, Sec. 2, L. 1967	153	7	Rep. Ch. 147, Sec. 242, L. 1963
55	1	Rep. Ch. 368, Sec. 248, L. 1969	160	1	Rep. Ch. 368, Sec. 248, L. 1969
57	1-6	Rep. Ch. 197, Sec. 223, L. 1967	163	1	Rep. Ch. 5, Sec. 496, L. 1971
61	1	Rep. Ch. 5, Sec. 496, L. 1971	166	1	Rep. Ch. 5, Sec. 496, L. 1971
66	1	Rep. Ch. 189, Sec. 2, L. 1963	168	1	Rep. Ch. 369, Sec. 20, L. 1969
75	1	Rep. Ch. 368, Sec. 248, L. 1969	170	1-4	Temporary
79	1	Rep. Ch. 368, Sec. 248, L. 1969	171	1	Rep. Ch. 198, Sec. 98, L. 1967
82	1	Rep. Ch. 266, Sec. 82, L. 1963	172	1-3	Rep. Ch. 197, Sec. 223, L. 1967
83	1-2	Rep. Ch. 147, Sec. 4, L. 1971	174	1	Rep. Ch. 99, Sec. 43, L. 1969
84	1	Rep. Ch. 13, Sec. 84, L. 1961	180	1	Rep. Ch. 199, Sec. 1, L. 1961
	2-3	Rep. Ch. 199, Sec. 101, L. 1965	181	1	Rep. Ch. 199, Sec. 1, L. 1961
89	1-3	Rep. Ch. 5, Sec. 496, L. 1971	182	1	Rep. Ch. 202, Sec. 3, L. 1959
92	1	Rep. Ch. 368, Sec. 248, L. 1969	185	20	Rep. Ch. 188, Sec. 4, L. 1959
103	1	Rep. Ch. 420, Sec. 4, L. 1971	190	1	Rep. Ch. 257, Sec. 10, L. 1965
				4	Rep. Ch. 257, Sec. 10, L. 1965

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	2	Rep. Ch. 184, Sec. 8, L. 1961	73	1	Rep. Ch. 199, Sec. 101, L. 1965
198	1	Rep. Ch. 369, Sec. 20, L. 1969	76	1-4	Rep. Ch. 5, Sec. 496, L. 1971
199	1-3	Rep. Ch. 5, Sec. 496, L. 1971	82	1	Rep. Ch. 2, Sec. 63, L. 1971
	4	Temporary	91	1	Rep. Ch. 5, Sec. 496, L. 1971
	5-22	Rep. Ch. 5, Sec. 496, L. 1971	92	1	Rep. Ch. 5, Sec. 496, L. 1971
200	1-3	Rep. Ch. 5, Sec. 496, L. 1971	106	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
202	1	Rep. Ch. 369, Sec. 20, L. 1969	107	1	Rep. Ch. 5, Sec. 496, L. 1971
205	1	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	108	1	Rep. Ch. 2, Sec. 63, L. 1971
	2-3	Appropriation	109	1	Rep. Ch. 5, Sec. 496, L. 1971
206	6	Rep. Ch. 199, Sec. 101, L. 1965	114	1	Rep. Ch. 5, Sec. 496, L. 1971
	7-10	Rep. Ch. 230, Sec. 1, L. 1959	122	1	S. M.R.Civ.P., Rule 4 D
	11	Rep. Ch. 199, Sec. 101, L. 1965		2	Rep. Ch. 189, Sec. 2, L. 1963
	12	Rep. Ch. 230, Sec. 1, L. 1959	125	2, 3	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971
	13-17	Rep. Ch. 199, Sec. 101, L. 1965	127	1-3	Rep. Ch. 127, Sec. 15, L. 1963
1951			129	1	Rep. Ch. 55, Sec. 3, L. 1965
Ch.	Sec.	Herein	130	1	Rep. Ch. 160, Sec. 24, L. 1965
5	1	Rep. Ch. 300, Sec. 143, L. 1967	131	1	Rep. Ch. 420, Sec. 4, L. 1971
12	1	Rep. Ch. 368, Sec. 248, L. 1969	138	1	Rep. Ch. 280, Sec. 10, L. 1967
14	1	Rep. Ch. 368, Sec. 248, L. 1969	143	1-6	Rep. Ch. 99, Sec. 43, L. 1969
19	1-3	Rep. Ch. 264, Sec. 10-102, L. 1963	148	2	Rep. Ch. 147, Sec. 242, L. 1963
25	1	Rep. Ch. 197, Sec. 12-109, L. 1965	154	1-7	Rep. Ch. 197, Sec. 223, L. 1967
32	1	Rep. Ch. 5, Sec. 496, L. 1971	155	1-2	Rep. Ch. 361, Sec. 7, L. 1969
42	1	Rep. Ch. 127, Sec. 15, L. 1963	163	1	Rep. Ch. 5, Sec. 496, L. 1971
52	1	Rep. Ch. 369, Sec. 20, L. 1969	168	1-5	Rep. Ch. 232, Sec. 9, L. 1961
59	1	Rep. Ch. 185, Sec. 3, L. 1969	175	1-8	Rep. Ch. 300, Sec. 143, L. 1967
60	1	Rep. Ch. 185, Sec. 3, L. 1969	176	1	Rep. Ch. 300, Sec. 143, L. 1967
62	1	Rep. Ch. 280, Sec. 22, L. 1965	177	9, 10	Rep. Ch. 93, Sec. 44, L. 1969
63	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	180	1	Rep. Ch. 5, Sec. 496, L. 1971
64	1	Rep. Ch. 368, Sec. 248, L. 1969			

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188	1-3	Rep. Ch. 5, Sec. 496, L. 1971	7	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
189	2-8	Rep. Ch. 5, Sec. 496, L. 1971	8	1	Rep. Ch. 156, Sec. 11, L. 1965
191	1-2	Rep. Ch. 194, Sec. 13, L. 1967	9	1	Rep. Ch. 13, Sec. 84, L. 1961
193	1-6	Rep. Ch. 341, Sec. 30, L. 1969	11	1	Rep. Ch. 199, Sec. 1, L. 1961
	8	Rep. Ch. 341, Sec. 30, L. 1969	16	1	Rep. Ch. 13, Sec. 84, L. 1961
194	5	Rep. Ch. 81, Sec. 3, L. 1961	18	1	Rep. Ch. 147, Sec. 4, L. 1971
	7-10	Rep. Ch. 158, Sec. 2, L. 1959	21	1	Rep. Ch. 5, Sec. 496, L. 1971
201	1-17	Unconstitutional, 127 M 504, 267 P 2d 724	22	1	Rep. Ch. 5, Sec. 496, L. 1971
203	4	Rep. Ch. 93, Sec. 44, L. 1969	23	1	Rep. Ch. 5, Sec. 496, L. 1971
206	1	Rep. Ch. 199, Sec. 1, L. 1961	31	1-15	Rep. Ch. 197, Sec. 12-109, L. 1965
207	1-4	Rep. Ch. 5, Sec. 496, L. 1971	33	1	Rep. Ch. 102, Sec. 3, L. 1969
208	1-4	Rep. Ch. 5, Sec. 496, L. 1971	35	1	Rep. Ch. 199, Sec. 101, L. 1965
210	1	Rep. Ch. 5, Sec. 496, L. 1971	41	2	Rep. Ch. 290, Sec. 6, L. 1967
219	1-5	Rep. Ch. 197, Sec. 12-109, L. 1965	46	1	Rep. Ch. 300, Sec. 143, L. 1967
	7-9	Rep. Ch. 197, Sec. 12-109, L. 1965	48	1	Rep. Ch. 256, Sec. 6, L. 1971
	11	Rep. Ch. 206, Sec. 27, L. 1963	49	1	Rep. Ch. 256, Sec. 6, L. 1971
	14-15	Rep. Ch. 197, Sec. 12-109, L. 1965	50	1	Rep. Ch. 256, Sec. 6, L. 1971
220	1, 2	Rep. Ch. 5, Sec. 496, L. 1971	52	1	Rep. Ch. 280, Sec. 22, L. 1965
222	1-18	Rep. Ch. 208, Sec. 3, L. 1961	53	1	Rep. Ch. 280, Sec. 22, L. 1965
227	1-3	Rep. Ch. 147, Sec. 242, L. 1963	55	1	Rep. Ch. 156, Sec. 11, L. 1965
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Ch.	Sec.	Herein	61	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
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	12	Rep. Ch. 270, Sec. 10, L. 1963	72	1-3	Rep. Ch. 368, Sec. 248, L. 1969
	16	Rep. Ch. 140, Sec. 32, L. 1969	77	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
			78	1	Rep. Ch. 78, Sec. 9, L. 1965
			83	1	Rep. Ch. 368, Sec. 248, L. 1969
			84	1	Rep. Ch. 197, Sec. 12-109, L. 1965

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86	1-3	Rep. Ch. 199, Sec. 101, L. 1965	189	1-4	Rep. Ch. 271, Sec. 33, L. 1963
89	1	Rep. Ch. 99, Sec. 43, L. 1969	196	1	Rep. Ch. 5, Sec. 496, L. 1971
103	1	Rep. Ch. 189, Sec. 2, L. 1963	197	1	Rep. Ch. 82, Sec. 4, L. 1961
104	1-2	Rep. Ch. 368, Sec. 248, L. 1969	201	1	Rep. Ch. 5, Sec. 496, L. 1971
113	1	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971	202	1	Rep. Ch. 5, Sec. 496, L. 1971
	3-7	Rep. Ch. 5, Sec. 496, L. 1971	206	1	Rep. Ch. 185, Sec. 3, L. 1969
117	1	Rep. Ch. 197, Sec. 12-109, L. 1965	207	1	Rep. Ch. 5, Sec. 496, L. 1971
118	1	Rep. Ch. 197, Sec. 12-109, L. 1965	211	1-7	Rep. Ch. 320, Sec. 9, L. 1971
120	1	Rep. Ch. 5, Sec. 496, L. 1971	212	1	Rep. Ch. 42, Sec. 2, L. 1961
123	1	Rep. Ch. 140, Sec. 32, L. 1969	214	12	Rep. Ch. 368, Sec. 248, L. 1969
133	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965		13-15	Rep. Ch. 156, Sec. 11, L. 1965
	5-9	Rep. Ch. 197, Sec. 12-109, L. 1965		16	Rep. Ch. 368, Sec. 248, L. 1969
138	1	Rep. Ch. 97, Sec. 32, L. 1961	216	2-5	Rep. Ch. 5, Sec. 496, L. 1971
139	1	Rep. Ch. 197, Sec. 12-109, L. 1965	217	1	Rep. Ch. 369, Sec. 20, L. 1969
142	1	Rep. Ch. 189, Sec. 2, L. 1959	221	1	Rep. Ch. 369, Sec. 20, L. 1969
150	1	Rep. Ch. 250, Sec. 24, L. 1963	226	1-6	Rep. Ch. 232, Sec. 9, L. 1961
151	1	Rep. Ch. 189, Sec. 2, L. 1963	229	1	Rep. Ch. 189, Sec. 2, L. 1963
153	1	Rep. Ch. 56, Sec. 1, L. 1969	230	1	Rep. Ch. 5, Sec. 496, L. 1971
157	1	Rep. Ch. 5, Sec. 496, L. 1971	231	1	Rep. Ch. 197, Sec. 12-109, L. 1965
158	2	Rep. Ch. 99, Sec. 43, L. 1969	233	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
162	1-18	Rep. Ch. 199, Sec. 101, L. 1965	235	1	Rep. Ch. 199, Sec. 101, L. 1965
165	1	Rep. Ch. 147, Sec. 242, L. 1963	236	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
166	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	237	1	Rep. Ch. 5, Sec. 496, L. 1971
173	1	Rep. Ch. 274, Sec. 20, L. 1965	238	16	Rep. Ch. 147, Sec. 242, L. 1963
174	1-2	Rep. Ch. 314, Sec. 14, L. 1969	239	1-8	Rep. Ch. 403, Sec. 35, L. 1971
176	2	68-701, 68-702, 68-704 to 68-709	240	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	3	Rep. Ch. 5, Sec. 496, L. 1971	241	1	Rep. Ch. 42, Sec. 2, L. 1961
	4, 5	Rep. Ch. 205, Sec. 2, L. 1971	242	1	Rep. Ch. 2, Sec. 63, L. 1971
181	1	Rep. Ch. 197, Sec. 223, L. 1967		2	Rep. Ch. 266, Sec. 82, L. 1963
186	1-2	Rep. Ch. 213, Sec. 9, L. 1963		3-9	Rep. Ch. 2, Sec. 63, L. 1971
			244	1	Rep. Ch. 5, Sec. 496, L. 1971

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250	1	Rep. Ch. 5, Sec. 496, L. 1971	104	1-10	Rep. Ch. 197, Sec. 12-109, L. 1965
251	1-15	Rep. Ch. 3, Sec. 9, Ex. L. 1967	105	1	Rep. Ch. 5, Sec. 496, L. 1971
1955			106	1-3	Rep. Ch. 197, Sec. 12-109, L. 1965
Ch.	Sec.	Herein	109	1	Rep. Ch. 197, Sec. 12-109, L. 1965
2	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	110	1	Rep. Ch. 97, Sec. 32, L. 1961
7	1-7	Rep. Ch. 314, Sec. 14, L. 1969	112	1	Rep. Ch. 154, Sec. 17, L. 1965
12	1	Rep. Ch. 300, Sec. 143, L. 1967	116	1	Rep. Ch. 38, Sec. 2, L. 1963
13	1-2	Rep. Ch. 300, Sec. 143, L. 1967	117	1	Rep. Ch. 199, Sec. 101, L. 1965
15	1	Rep. Ch. 197, Sec. 12-109, L. 1965		3	Rep. Ch. 199, Sec. 101, L. 1965
17	1-4	Rep. Ch. 369, Sec. 20, L. 1969	118	1	Rep. Ch. 199, Sec. 101, L. 1965
19	1	Rep. Ch. 368, Sec. 248, L. 1969	119	1-4	Rep. Ch. 307, Sec. 27, L. 1967
30	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	129	1	Rep. Ch. 102, Sec. 3, L. 1969
33	1	Rep. Ch. 197, Sec. 12-109, L. 1965		2-3	Rep. Ch. 213, Sec. 9, L. 1963
43	1	Rep. Ch. 5, Sec. 496, L. 1971	130	1-2	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963
44	1	Rep. Ch. 5, Sec. 496, L. 1971	131	1	Rep. Ch. 99, Sec. 43, L. 1969
49	1	Rep. Ch. 213, Sec. 9, L. 1963		2-3	Rep. Ch. 153, Sec. 14, L. 1965
50	1	Rep. Ch. 196, Sec. 2, L. 1967	133	1	Rep. Ch. 266, Sec. 82, L. 1963
52	1	Rep. Ch. 5, Sec. 496, L. 1971		2	Rep. Ch. 199, Sec. 101, L. 1965
53	1	Rep. Ch. 5, Sec. 496, L. 1971	136	1	Rep. Ch. 236, Sec. 30, L. 1963
59	1	Rep. Ch. 197, Sec. 223, L. 1967	139	1-3	Rep. Ch. 285, Sec. 20, L. 1959
66	5	Rep. Ch. 97, Sec. 32, L. 1961	140	1	Rep. Ch. 5, Sec. 496, L. 1971
80	1-2	Rep. Ch. 368, Sec. 248, L. 1969	141	1	Rep. Ch. 5, Sec. 496, L. 1971
85	1	S. M.R.App.Civ.P., Rules 9, 10, 25	142	1-16	Rep. Ch. 197, Sec. 223, L. 1967
88	1	Rep. Ch. 42, Sec. 2, L. 1961	145	1	Rep. Ch. 300, Sec. 143, L. 1967
89	1	Rep. Ch. 197, Sec. 12-109, L. 1965	151	1	Rep. Ch. 236, Sec. 30, L. 1963
91	1	Rep. Ch. 197, Sec. 12-109, L. 1965	152	1	Rep. Ch. 368, Sec. 248, L. 1969
92	5	68-701, 68-702, 68-704 to 68-710	154	1	Rep. Ch. 199, Sec. 101, L. 1965
			155	1	Rep. Ch. 158, Sec. 11, L. 1959
			160	1	Rep. Ch. 5, Sec. 496, L. 1971

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175	1	Rep. Ch. 197, Sec. 12-109, L. 1965	236	1	Rep. Ch. 5, Sec. 496, L. 1971
177	1	Rep. Ch. 197, Sec. 12-109, L. 1965	237	1	Rep. Ch. 202, Sec. 3, L. 1959
179	1	Rep. Ch. 163, Sec. 1, L. 1959	241	1	Rep. Ch. 5, Sec. 496, L. 1971
180	1-3	Rep. Ch. 2, Sec. 63, L. 1971	242	1	Rep. Ch. 5, Sec. 496, L. 1971
181	1	Rep. Ch. 264, Sec. 10-102, L. 1963	246	12	Rep. Ch. 126, Sec. 8, L. 1963
183	1	Rep. Ch. 197, Sec. 12-109, L. 1965	248	1-4	Rep. Ch. 2, Sec. 63, L. 1971
	5	Rep. Ch. 197, Sec. 12-109, L. 1965	251	1	Rep. Ch. 197, Sec. 12-109, L. 1965
186	1	Rep. Ch. 232, Sec. 9, L. 1961	258	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	3-6	Rep. Ch. 232, Sec. 9, L. 1961	261	1	Rep. Ch. 199, Sec. 101, L. 1965
187	1	Rep. Ch. 236, Sec. 30, L. 1963	262	1	Rep. Ch. 201, Sec. 7, L. 1961
191	1	Rep. Ch. 5, Sec. 496, L. 1971	263	39 140	32-2142 Rep. Ch. 139, Sec. 5, L. 1965
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203	1	Rep. Ch. 5, Sec. 496, L. 1971	266	1	Rep. Ch. 5, Sec. 496, L. 1971
206	1-7	Rep. Ch. 5, Sec. 496, L. 1971	272	1	Rep. Ch. 5, Sec. 496, L. 1971
207	1-2	Rep. Ch. 368, Sec. 248, L. 1969	277	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
208	1	Rep. Ch. 199, Sec. 1, L. 1961	278	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
210	1	Rep. Ch. 60, Sec. 1, L. 1969; Ch. 369, Sec. 20, L. 1969	279	1-7 8 9	Rep. Ch. 271, Sec. 33, L. 1963 Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963 Rep. Ch. 271, Sec. 33, L. 1963
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19	1	Rep. Ch. 2, Sec. 63, L. 1971	132	1	Rep. Ch. 250, Sec. 24, L. 1963
21	1	Rep. Ch. 97, Sec. 32, L. 1961	143	4-6	Rep. Ch. 193, Sec. 2, L. 1963
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25	1	Rep. Ch. 266, Sec. 82, L. 1963; Ch. 2, Sec. 63, L. 1971	157	1	Rep. Ch. 99, Sec. 43, L. 1969
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	50	Rep. Ch. 271, Sec. 8, L. 1959	251	1	Rep. Ch. 5, Sec. 496, L. 1971
	52	Rep. Ch. 246, Sec. 12, L. 1963	252	1	Rep. Ch. 307, Sec. 27, L. 1967
	54	Rep. Ch. 246, Sec. 12 and Ch. 247, Sec. 26, L. 1963		2	Rep. Ch. 160, Sec. 24, L. 1965
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3	1	16-1638		3	Effective Date
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4	1	76-107	19	1	Rep. Ch. 199, Sec. 101, L. 1965
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5	1	76-102	20	1-2	Rep. Ch. 368, Sec. 248, L. 1969
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7	1	75-5201		2	Repealing Clause
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32	1	Rep. Ch. 368, Sec. 248, L. 1969		4	Effective Date
	2	Repealing Clause	55	1	Repealing Clause
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33	1	Rep. Ch. 55, Sec. 3, L. 1965		2	Repealing Clause
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34	1	26-201		2	Repealing Clause
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74	1	Rep. Ch. 5, Sec. 496, L. 1971	102	1	Repealing Clause
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79	1	Rep. Ch. 5, Sec. 496, L. 1971		2	Repealing Clause
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126	1	84-4711		2	Repealing Clause
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VOLUME 1

Part 2

1971 Cumulative Pocket Supplement

Containing

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LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 1 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1
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CHAPTER 2—STATE AERONAUTICS COMMISSION

Section

- 1-201. Creation of state aeronautics commission.
- 1-202. Organization—meetings—reports.

1-201. Creation of state aeronautics commission. (a) Composition. There is hereby created a commission to be known as the state aeronautics commission. Said commission shall consist of seven persons who shall be appointed by the governor within thirty days after the passage and approval of this act, and who shall serve without compensation except that they shall receive a per diem of twenty dollars (\$20) for each day actually expended in the performance of their duties under this act and shall be reimbursed for all actual and necessary traveling expenses, incurred by them in the discharge of their official duties, provided, however, that no member of the commission shall receive per diem allowance in excess of one thousand dollars (\$1,000) annually. The governor shall appoint the members of said commission in the following manner: One shall be selected from the Montana Pilots' Association; one from Montanans, Incorporated; one from the Municipal League; one from the County Commissioners Association; one selected from among those actively engaged in aviation education in Montana; one to be selected by the governor as a representative of interstate commercial airline operators, who must at the time of appointment, be an employee or official of such an operator, and whose residence must be within the state of Montana; and one to be selected by the governor, who is an active base operator in the state at the time of his appointment or an official of such base operator of flying services, or flying schools.

(b) The members of the said commission shall serve for a period of four (4) years from date of their appointment and until their successors are appointed and qualified. Provided, however, that in making said appointments, the governor may shorten the term of two (2) of said appointees to any period of time less than four (4) years so that the terms of office of all seven (7) members of the commission shall not expire in the same year. The members of the commission may be removed by

the governor after notice and hearing for inefficiency, neglect of duty or malfeasance in office.

History: En. Sec. 4, Ch. 152, L. 1945; amd. Sec. 1, Ch. 347, L. 1971.

Amendments

The 1971 amendment increased the per diem allowance from \$10 to \$20; increased the annual limit for per diem from \$500 to \$1,000; and made minor changes in punctuation and style.

Cross-References

Commission renamed and continued as advisory and quasi-judicial board, sec. 82A-905.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

1-202. Organization—meetings—reports. The commission shall, within thirty days after its appointment, organize, adopt a seal, and make such rules and regulations for its administration, not inconsistent herewith, as it may deem expedient and may from time to time amend such rules and regulations. At such organization meeting it shall elect from among its members a chairman, a vice-chairman and a secretary, to serve for one year, and annually thereafter shall select such officers; all to serve until their successors are appointed and qualified. It shall at its initial meeting fix the date and place for its regular meetings. Four members shall constitute a quorum, and no action shall be taken by less than a majority of the commission. Special meetings may be called as provided by its rules and regulations. All regular and special commission meetings shall be open to the public. It shall report as provided in section 2 [82-4002] of this act. The fiscal year of the commission shall conform to the fiscal year of the state.

History: En. Sec. 5, Ch. 152, L. 1945; amd. Sec. 3, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the ref-

erence to the reporting requirements of section 82-4002 for provisions relating to the requirements of an annual report in the seventh sentence, and deleted a provision detailing contents of report.

1-204. General powers and duties of commission.

Cross-References

Commission functions transferred, sec. 82A-903(1).

CHAPTER 3—REGULATION AND LICENSES

Section

1-324. Publication of notice.

1-323. Regulatory powers of commission, etc.

Cross-References

Functions retained by board of aeronautics, sec. 82A-905(4).

1-324. Publication of notice. Notice as required by section 1-323 shall be given by publication once a week for three (3) successive weeks in a newspaper of general circulation in the county in which the hearing is to be held and by personal service by mailing to all interested parties. However, in the case of the hearings required by subdivisions (2) (b) and (9) of section 1-323, R. C. M. 1947, if no written protest or written request that the hearing be held is received by the commission within five (5)

days after the date of the last publication of such notice, the commission may, in its discretion, vacate such hearing and fix and establish the rates, fares, charges, classifications and rules of the air carrier without hearing. The notice required herein shall state that the commission may vacate the hearing unless a written protest or request that the hearing be held is received by the commission as required by this section.

History: En. Sec. 3, Ch. 171, L. 1967;
amd. Sec. 1, Ch. 208, L. 1969.

Amendments

The 1969 amendment authorized person-

al service by mail and provided that hearings on rates, fares, charges, classifications and rules of air carriers may be vacated if no written protest or request is received.

CHAPTER 8—ESTABLISHMENT OF AIRPORTS BY COUNTIES
AND CITIES—MUNICIPAL AIRPORTS ACT

Section

1-804. Tax levy for establishment and operation of airports.

1-805.1. Validation of previous contracts and tax levies—1971 act.

1-801. (5668.25) Counties, cities and towns may acquire land, etc.

Cross-References

Municipal and regional airport authorities, secs. 1-901 to 1-927.

1-804. (5668.38) Tax levy for establishment and operation of airports. For the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields under the provisions of this act the county commissioners or the city or town council may each year assess and levy in addition to the annual levy for general administrative purposes, a tax of not to exceed two (2) mills on the dollar of taxable value of the property of said county, city or town. In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture shall pay, based upon the benefits it is determined each shall derive from the project. Provided, that if it be found that the levy hereby authorized will be insufficient for the purposes herein enumerated, the commissioners and councils acting are hereby authorized and empowered to contract an indebtedness on behalf of such county, city or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for such purpose until the proposition has been submitted to the qualified electors, and a majority vote to be cast therefor, except that for the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways and ramps, said governing bodies may set up annual reserve funds in their annual budget, provided said reserve is approved by the governing bodies during the normal budgeting procedure. Provided further that the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates, and provided that said funds are expended at least within each ten (10) year period. Said fund shall not

exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways and ramps, of any one airport for each said fund. The governing body of said airport, if in its judgment deems it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the F.D.I.C. or obligations of the United States of America, either short-term or long-term. Interest earned from such investments shall be credited to the operations and maintenance budget of said airport governing body. The above provisions, notwithstanding other budget control measures, and due to the uniqueness of the subject matter, and are hereby declared necessary in the interests of the public health and safety.

History: En. Sec. 4, Ch. 108, L. 1929; amd. Sec. 4, Ch. 54, L. 1941; amd. Sec. 1, Ch. 54, L. 1945; amd. Sec. 1, Ch. 122, L. 1969; amd. Sec. 16, Ch. 158, L. 1971.

Amendments

The 1969 amendment added the provisions authorizing governing bodies of airports to set up annual reserve funds in their annual budget to resurface, overlay or improve existing runways, taxiways and ramps.

The 1971 amendment substituted "qualified electors" for "taxpayers affected thereby" in the proviso relating to bond elections.

Repealing Clause

Section 2 of Ch. 122, Laws 1969 repealed all acts and parts of acts in conflict therewith.

1-805.1. Validation of previous contracts and tax levies—1971 act. All levies and expenditures heretofore made and engagements entered into by counties, cities, or towns for the purposes contemplated by chapter 8, Title 1, R.C.M. 1947, as amended, and all elections held in counties, cities or towns for the purpose of creating indebtedness for such purposes, wherein a majority of the vote cast was in favor of such indebtedness, whether such counties, cities and towns were acting individually or jointly, under the authority of this act, are hereby validated and declared legally created, entered into and made, and all evidence of such indebtedness is declared to be a legal obligation of the county, city or town wherein such a majority vote has been cast in favor of such indebtedness.

History: En. Sec. 1, Ch. 278, L. 1971.

Title of Act

An act validating and declaring legal all levies and expenditures heretofore made and engagements entered into by counties, cities or towns for the purposes of the Municipal Airport Act and all elections held in counties, cities or towns for the purpose of creating indebtedness for such

purposes wherein a majority of the vote cast was in favor of such indebtedness; and providing for an effective date.

Effective Date

Section 2 of Ch. 278, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.

1-829 to 1-832. Unconstitutional.

Compiler's Notes

Sections 1-829 to 1-832 (Secs. 1 to 4, Ch. 281, L. 1969), authorizing passenger service charges against passenger air carriers, were held unconstitutional in *Northwest Airlines, Inc. v. Joint City-County Airport Board*, 154 M 352, 463 P 2d 470. See annotation below.

Constitutionality

This act (1-829 through 1-832) creates an unreasonable and undue discrimination since imposition of charge based on number of emplaning passengers bears no reasonable relationship to use of airport facilities by carrier and is therefore unconstitutional as repugnant to "equal protection clause" of 14th Amendment of

United States Constitution, and violates Joint City-County Airport Board, 154 M sections 3 and 27 of article III of Montana 352, 463 P 2d 470.
constitution. Northwest Airlines, Inc. v.

CHAPTER 9—MUNICIPAL AND REGIONAL AIRPORT AUTHORITIES

Section

- 1-901. Definitions.
- 1-902. Aeronautics commission may exercise powers of airport authority—exceptions.
- 1-903. Airport operation and income.
- 1-904. Creation of municipal airport authority.
- 1-905. Creation of regional airport authority.
- 1-906. Sinking funds for repair, maintenance and capital outlays.
- 1-908. Commissioners—compensation—meetings—officers.
- 1-909. General powers of an authority.
- 1-910. Eminent domain.
- 1-911. Disposal of airport property.
- 1-912. Bonds and other obligations.
- 1-913. Operation and use privileges.
- 1-914. Regulations.
- 1-915. Federal and state aid.
- 1-916. Tax levy may be certified by airport authority or municipality.
- 1-917. County tax levy for airport purposes.
- 1-918. Joint operations.
- 1-919. Public purpose.
- 1-920. Airport property and income exempt from taxation.
- 1-921. Municipal co-operation.
- 1-922. Out-of-state airport jurisdiction authorized—reciprocity with adjoining state and governmental agencies.
- 1-923. Supplemental authority.
- 1-924. Savings clause—airport zoning.
- 1-925. Short title.
- 1-926. Repealing clause.
- 1-927. Severability clause.

1-901. Definitions. The following words or terms whenever used or referred to in this chapter shall have the following respective meanings unless different meanings clearly appear from the context:

1. “Municipality” shall mean any county, city, town or public body of this state;

2. “Municipal airport authority” or “municipal authority” shall mean a municipal airport authority created pursuant to the provisions of section 1-904 of this chapter;

3. “Regional airport authority” or “regional authority” shall mean a regional airport authority created pursuant to the provisions of section 1-905 of this chapter;

4. “Airport authority” or “authority” shall mean any regional airport authority or municipal airport authority created pursuant to the provisions of this chapter, and the governing body of a municipality which has determined to exercise the powers of a municipal airport authority, pursuant to section 1-904;

5. “Governing body” shall mean bodies and boards by whatsoever names they may be known, having charge of finances and management of a municipality;

6. “Clerk” shall mean the custodian of the official records of a municipality;

7. "Bonds" shall mean any bonds, notes, interim certificates, debentures, or similar obligations issued by an authority pursuant to this chapter;

8. "Airport" shall mean any area of land or water which is used, or intended for use, for the landing and taking off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights of way, including approaches and clear zones, together with all airport buildings and facilities located thereon;

9. "Air navigation facility" shall mean any facility—other than one owned and operated by the United States—used in, available for use in, or designed for use in aid of air navigation, including any structures, buildings, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices, used or useful as an aid, or constituting an advantage or convenience, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities;

10. "Airport hazard" shall mean any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft;

11. "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof;

12. "Real property" shall mean lands, structures, buildings, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property; and

13. "Project" shall mean any airport operated by the authority, including all real and personal property, structures, buildings, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers and freight or as part of aviation operation air navigation, and air safety operation.

History: En. 1-901 by Sec. 1, Ch. 433, L. 1971.

Title of Act

An act to establish municipal and regional airport authorities; to provide for a tax levy for operation thereof; to provide for airport commissioners; to provide for the general power of an airport authority; to provide powers of eminent domain for issuance of bonds, and for

the establishment of operational uses privileges; to provide for rules and regulations in connection with an airport authority; to provide for acceptance of federal aid for airports; to provide for joint operations of airport facilities and to provide for municipal co-operation in regard to airport operation. It is the intent of the legislative assembly that all sections of this bill be codified in Title 1, chapter 9, R. C. M. 1947.

1-902. Aeronautics commission may exercise powers of airport authority—exceptions. The Montana aeronautics commission shall have all powers of an airport authority as defined in this chapter, except powers to certify or levy taxes or issue bonds, for constructing and operating

public airports or landing fields near international border ports of entry, and near state or national parks or near or in recreational areas as the aeronautics commission may determine to be in the public interest.

History: En. 1-902 by Sec. 2, Ch. 433, L. 1971.

1-903. Airport operation and income. The aeronautics commission shall have operational control of airports constructed under the provisions of section 1-902 and may provide for the imposition of landing fees, granting of fuel and service concessions, or the lease of portions of the premises for other related airport services or for purposes not inconsistent with the use of the premises for airport purposes. All income from the operation of such airports shall be deposited in the state treasury in a special operating fund to be known as the airport operating fund. All expenditures from such fund shall be within the limits of legislative appropriations and shall be made upon vouchers, signed and approved by the director of the aeronautics commission.

History: En. 1-903 by Sec. 3, Ch. 433, L. 1971.

1-904. Creation of municipal airport authority. Any municipality may, by resolution of its governing body, create a public body corporate and politic to be known as a municipal airport authority, which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; or the governing body may by resolution determine to exercise any or all powers granted to such authorities in this chapter until or unless such powers are or have been conferred upon a municipal or regional airport authority. Upon the adoption of a resolution creating a municipal airport authority, the governing body of the municipality shall, pursuant to the resolution, appoint five (5) persons as commissioners of the authority. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, but thereafter, each commissioner shall be appointed for a term of five (5) years, except that vacancies occurring otherwise than by expiration of the term shall be filled for the unexpired term by the governing body.

History: En. 1-904 by Sec. 4, Ch. 433, L. 1971.

1-905. Creation of regional airport authority. 1. Two (2) or more municipalities may, by joint resolution create a public body, corporate and politic, to be known as a regional airport authority that the resolution creating a regional airport authority shall create a board of not less than five (5) commissioners; the number to be appointed, their term and compensation, if any, shall be provided for in the resolution. Each such regional airport authority shall organize, select officers for terms to be fixed by agreement and adopt and amend from time to time rules for its own procedure not inconsistent with section 1-908.

2. A regional airport authority may be increased from time to time to serve one (1) or more additional municipalities if each additional

municipality and each of the municipalities then included in the regional authority and the commissioners of the regional authority, respectively, adopt a joint resolution consenting thereto; provided, that if a municipal airport authority for any municipality seeking to be included in the regional authority is then in existence, the commissioners of the municipal authority must consent to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligation, and property, real and personal, of the municipal authority shall be in the name of and vest in the regional authority.

3. A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

4. A municipality shall not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof shall be given at least ten (10) days prior thereto in a newspaper published in the municipality, or if there is no newspaper published therein, then in a newspaper having general circulation in the municipality.

History: En. 1-905 by Sec. 5, Ch. 433,
L. 1971.

1-906. Sinking funds for repair, maintenance and capital outlays. An airport authority may create a sinking fund and accumulate therein the sum of five million dollars (\$5,000,000) together with interest thereon for the use, repairs, maintenance and capital outlays of an air navigation facility.

History: En. 1-906 by Sec. 6, Ch. 433,
L. 1971.

1-908. Commissioners—compensation—meetings—officers. A commissioner of an authority shall be entitled to the necessary expense, including travel expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

The powers of each authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

There shall be elected a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper.

History: En. 1-908 by Sec. 7, Ch. 433,
L. 1971.

Compiler's Notes

As enacted, Chapter 433, Laws 1971
contained no section 1-907.

1-909. General powers of an authority. An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter including the power to certify, annually to the governing bodies creating it, the amount of tax to be levied by said governing bodies for airport purposes including, but not limited to, the power:

1. To sue and be sued; to have a seal; and to have perpetual succession;

2. To execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter;

3. To plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at such airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers, and the purchase and sale of supplies, goods, and commodities as are incident to the operation of its airport properties. For such purposes an authority may by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

4. To establish comprehensive airport zoning regulations in accordance with the laws of this state. For the purpose of this chapter, a regional airport authority shall have the same powers as all other political subdivisions in the adoption and enforcement of comprehensive airport zoning regulations as provided for by the laws of this state.

5. To acquire, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, existing airports and air navigation facilities, provided, however, an authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of such authority, municipality or public agency.

6. To establish or acquire and maintain airports in, over, and upon any public waters of this state, any submerged lands under such public waters provided that the authority has obtained the approval of the owner or agency that controls the water; and to construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

History: En. 1-909 by Sec. 8, Ch. 433,
L. 1971.

1-910. Eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed in the manner provided by the laws of this state, and such other laws that may now or hereafter apply to the state or to political sub-

divisions of this state in exercising the right of eminent domain. The municipality shall not be precluded from abandoning such proceedings in any case where possession of the property has not been taken.

History: En. 1-910 by Sec. 9, Ch. 433,
L. 1971.

1-911. Disposal of airport property. Except as may be limited by the terms and conditions of any grant, loan or agreement, authorized by section 1-915 of this chapter, an authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this chapter. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in such manner and upon such terms as the commissioners of the authority may deem in the best interest of civil aviation.

History: En. 1-911 by Sec. 10, Ch. 433,
L. 1971.

1-912. Bonds and other obligations. An authority shall have the power to borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including grants or contributions from the federal government or other sources, which bonds may be sold at public or private sale which shall bear interest at a rate or rates not exceeding ten per centum (10%) per annum. Any bonds issued pursuant to this chapter by an authority, shall be payable as to principal and interest, solely from revenues of an airport or air navigation facility or facilities, and shall so state on their face any applicable limitation or restriction and that said bonds shall be issued as set forth in Title 11, chapter 24, R.C.M. 1947.

Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon, and income therefrom, shall be exempt from all taxes.

For the security of any such bonds the authority or municipality may by resolution make and enter onto any covenant, agreement, or indenture authorized to be made as security for revenue bonds. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities. Whenever bonds are issued under this chapter and made payable from revenues of an airport involving municipalities with over ten thousand (10,000) population, the governing body of the municipality shall be required, in the event that at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, to levy a

general tax upon all of the taxable property in the municipality for the payment of such deficiency and at any time a deficiency is likely to occur within one (1) year for the payment of principal and interest due on such bonds, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes shall not be subject to any limitation of rate or amount applicable to other municipal taxes, provided that the initial resolution authorizing bonds for airport financing shall be published in the official paper, and any owner of taxable property within the municipality may within sixty (60) days after such publication file a protest against the adoption of the resolution. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to twenty per cent (20%) or more of the assessed valuation of all taxable property within the municipality, all further proceedings under such initial resolution shall be barred.

History: En. 1-912 by Sec. 11, Ch. 433,
L. 1971.

1-913. Operation and use privileges. 1. In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed thirty (30) years with any persons:

a. Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

b. Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and

c. Making available services to be furnished by the authority or its agents at the airport or air navigation facility.

In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class or [of] privilege of [or] service and shall be established with due regard to the property and improvements used and the expenses of operation to the authority; provided that in no case shall the public be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion of facility thereof.

2. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by section 1-919 of this chapter, an authority may by contract, lease, or other arrangements, upon a consideration fixed by it, grant to any qualified person for a term not to exceed thirty (30) years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided that no person shall be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsection 1 of this section.

History: En. 1-913 by Sec. 12, Ch. 433,
L. 1971.

1-914. Regulations. An authority is authorized to adopt, amend, and repeal such reasonable resolutions, rules, regulations, and orders as it shall deem necessary for the management, government, and use of any airport or air navigation facility owned by it or under its control. No rule, regulation, order, or standard prescribed by the commission shall be inconsistent with, or contrary to, any act of the Congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules and regulations.

History: En. 1-914 by Sec. 13, Ch. 433,
L. 1971.

1-915. Federal and state aid. 1. An authority is authorized to accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the state.

2. An authority is authorized to designate the state aeronautics commission as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both, to accomplish in whole or in part, any of the purposes of this chapter; and to designate the state aeronautics commission as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment, or operation of any airport or other air navigation facility. An authority may enter into an agreement with the aeronautics commission prescribing the terms and conditions of the agency in accordance with such terms and conditions as are prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal moneys accepted under this section by the state aeronautics commission shall be accepted and transferred or expended by said commission upon such terms and conditions as are prescribed by the United States. All moneys received by the state aeronautics commission pursuant to this subsection shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes.

History: En. 1-915 by Sec. 14, Ch. 433,
L. 1971.

1-916. Tax levy may be certified by airport authority or municipality. The airport authority may certify annually to the governing bodies, the amount of tax to be levied by each municipality participating in the creation of the airport authority, and the municipality may levy the

amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy made shall not exceed the maximum levy permitted by the laws of this state for airport purposes. The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of such taxes when and as paid to the airport authority shall be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under section 1-912 the airport authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied and deposited annually as herein provided, until the bonds and interest thereon are fully paid.

History: En. 1-916 by Sec. 15, Ch. 433,
L. 1971.

1-917. County tax levy for airport purposes. In counties supporting airports or airport authorities, a levy, as provided for in section 1-804, R.C.M. 1947, may be made for such purposes.

History: En. 1-917 by Sec. 16, Ch. 433,
L. 1971.

1-918. Joint operations. 1. For the purposes of this section, unless otherwise qualified, the term "public agency" includes municipality and authority, each as defined in this chapter, any agency of the state government and of the United States, and any municipality, political subdivision or agency of an adjoining state; and the term "governing body" includes commissioners of an authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than an authority or municipality. All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state, and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise of enjoyment. Any agency of the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.

2. Any two (2) or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this section. Each agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities, and privileges involved in the joint undertaking, the proportion of costs of operation, capital outlay, and maintenance, to be borne by each public agency, and such other terms as are deemed necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned, prior to, or at such times as said property, facilities, and privileges, or any part

thereof, cease to be used for the purposes provided in this chapter, or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and undisposed of; the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

3. Public agencies acting jointly pursuant to this section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power, as agent of the participating public agencies, to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated, and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the airport, air navigation facility or airport hazard, subject to the limitations of subsection 4 of this section.

4. a. The total expenditures to be made by the joint board for any purpose in any calendar year shall be as determined by a budget approved by the constituent public agencies on or before the preceding June 10, or as otherwise specifically authorized by the constituent public agencies.

b. No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted in the annual budget may be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.

c. Eminent domain proceedings under this section may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common.

d. The joint board shall not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board may, without such consent, enter into contracts, leases, or other arrangements contemplated by section 1-913 of this chapter.

e. Any resolutions, rules, regulations, or orders of the joint board dealing with subjects authorized by section 1-913 of this chapter shall become effective only upon approval of the governing bodies of the constituent public agencies, provided that upon such approval, the resolutions, rules, regulations, or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinances,

resolutions, rules, regulations, or orders of each public agency would have in its own territory or jurisdiction.

5. For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans, and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in subsection 4 of this section.

History: En. 1-918 by Sec. 17, Ch. 433,
L. 1971.

1-919. Public purpose. The acquisition of any land, or interest therein, pursuant to this chapter, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any powers herein granted to authorities and other public agencies to be severally or jointly exercised, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

History: En. 1-919 by Sec. 18, Ch. 433,
L. 1971.

1-920. Airport property and income exempt from taxation. Any property in this state acquired by an authority for airport purposes pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation, or control thereof, shall be exempt from taxation to the same extent as other property used for public purpose.

History: En. 1-920 by Sec. 19, Ch. 433,
L. 1971.

1-921. Municipal co-operation. For the purpose of aiding and co-operating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of this chapter, any municipality for which an authority has been created may, upon such terms, with or without consideration, as it may determine.

1. Lend or donate money to the authority;

2. Provide that all or a portion of the taxes of funds available or to become available to, or required by law to be used by, the municipality for airport purposes, be transferred or paid directly to the airport authority as such funds become available to the municipality;

3. Cause water, sewer, or drainage facilities, or any other facilities which it is empowered to provide, to be furnished adjacent to or in connection with such airports or air navigation facilities;

4. Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority;

5. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such airports or air navigation facilities;

6. Do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and co-operate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities; and

7. Enter into agreements with the authority respecting action to be taken by the municipality pursuant to the provisions of this section.

History: En. 1-921 by Sec. 20, Ch. 433,
L. 1971.

1-922. Out-of-state airport jurisdiction authorized — reciprocity with adjoining state and governmental agencies. For the purpose of this section, "governmental agency" means any municipality, city, town, county, public corporation, or other public agency.

This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state, may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. The adjoining state or governmental agency shall have the power of eminent domain in this state, which shall be exercised in the manner provided by the laws of this state governing condemnation proceedings, provided that the power of eminent domain shall not be exercised unless the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in this section.

The powers granted in this section may be exercised jointly by two (2) or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

This section may be cited as the "Extraterritorial Airports Section."

History: En. 1-922 by Sec. 21, Ch. 433,
L. 1971.

1-923. Supplemental authority. In addition to the general and special powers conferred by this chapter, every authority is authorized to exercise

such powers as are necessary incidental to the exercise of such general and special powers.

History: En. 1-923 by Sec. 22, Ch. 433,
L. 1971.

1-924. Savings clause—airport zoning. Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

History: En. 1-924 by Sec. 23, Ch. 433,
L. 1971.

1-925. Short title. This chapter may be cited as the "Airport Authorities Act."

History: En. 1-925 by Sec. 24, Ch. 433,
L. 1971.

1-926. Repealing clause. All acts or parts of acts in conflict herewith are hereby repealed.

History: En. 1-926 by Sec. 25, Ch. 433,
L. 1971.

1-927. Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part that remains in effect in all valid applications are severable from the invalid applications.

History: En. 1-927 by Sec. 26, Ch. 433,
L. 1971.

vided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

Effective Date

Section 27 of Ch. 433, Laws 1971 pro-

TITLE 2—AGENCY

CHAPTER 1—DEFINITION OF AGENCY—AUTHORITY OF AGENTS

2-101. (7928) Agency defined.

Factors Determining Existence of Agency

Where service station proprietor was not required to file any written reports to oil company, proprietor could stock any merchandise of his choosing, oil company did not inspect service station and did not require proprietor to wear any particular uniform or to operate station during any particular hours, and only written

agreements between oil company and proprietor were equipment leases and truck rental; oil company was not liable for injury sustained by third person on service station premises due to gasoline fire since relationship between oil company and proprietor was not one of actual agency under this section. *Elkins v. Husky Oil Co.*, 153 M 159, 455 P 2d 329.

2-106. (7933) Ostensible agency.

Insufficient Evidence

Fact that service station proprietor displayed signs advertising oil company's products and honored oil company's credit cards, was not sufficient to make proprietor ostensible agent of oil company under

this section or section 2-124, and therefore oil company was not liable for injury sustained by third person on service station premises. *Elkins v. Husky Oil Co.*, 153 M 159, 455 P 2d 329.

2-122. (7945) Measure of agent's authority.

Failure To Make Authority Known

Authority of bank to apply funds from check endorsed in blank by debtor and delivered to bank by his wife was not measureable in terms of authority that

debtor conferred upon his wife without regard to whether that authority or its limitations were made known to bank. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

2-124. (7947) Ostensible authority defined.

Insufficient Evidence

Fact that service station proprietor displayed signs advertising oil company's products and honored oil company's credit cards, was not sufficient to make proprietor ostensible agent of oil company under this

section or section 2-106, and therefore oil company was not liable for injury sustained by third person on service station premises. *Elkins v. Husky Oil Co.*, 153 M 159, 455 P 2d 329.

TITLE 3—AGRICULTURE, HORTICULTURE AND DAIRYING

Chapter

1. Department and commissioner of agriculture—creation and general powers, 3-106, 3-116 to 3-123.
2. Grain standards—storage and inspection—regulation of grain warehousemen, 3-228.
8. Agricultural seeds, 3-802.1 to 3-802.3, 3-803, 3-820, 3-821.
14. Standard grades and brands for Montana farm products, 3-1401 to 3-1407, 3-1409, 3-1410.
17. Commercial fertilizer—regulation of sale, 3-1729 to 3-1734.
19. Mustard seed—grade requirements—purchaser's bond and license, 3-1902.
23. Eggs and egg dealers—license, 3-2301, 3-2306, 3-2307, 3-2310.
24. Manufactured dairy products, 3-2488 to 3-24-137.
29. Wheat research and marketing, 3-2911, 3-2913, 3-2914.

CHAPTER 1—DEPARTMENT AND COMMISSIONER OF AGRICULTURE— CREATION AND GENERAL POWERS

Section

- 3-106. Biennial report.
- 3-116. Purpose of act.
- 3-117. Definitions.
- 3-118. Agricultural marketing co-ordinator—qualifications—responsibilities.
- 3-119. Co-ordinator's duties.
- 3-120. Co-ordinator under supervision of commissioner of agriculture.
- 3-121. Agricultural marketing advisory body—composition—meetings—duties—reimbursement.
- 3-122. Co-ordinator's recommendations—commissioner's reports.
- 3-123. State agencies participating in marketing to co-operate.

3-101. (3555) Department of agriculture, labor and industry—creation.

Cross-References

Department abolished and functions transferred, sec. 82A-302(1).

3-106. (3560) Biennial report. The commissioner of agriculture shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 6, Ch. 216, L. 1921; re-en. Sec. 3560, R. C. M. 1921; amd. Sec. 4, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for provisions relating to the requirements of an annual report.

3-116. Purpose of act. It is the purpose of this act to create the position of agricultural marketing co-ordinator. It is the intent of the legislature in creating this position to have the agricultural marketing co-ordinator co-ordinate marketing all the way from the initial producer to the consumer. It is further the intent of this act to reduce marketing cost by empowering the co-ordinator to assist both producer and industry to find ways to more efficiently market their products. The co-ordinator will also endeavor to develop new and improved systems of marketing which will result in the stabilization and improvement of returns for industry and the producer. He will work with farm leaders, farmer co-

operatives, processors, wholesalers, retailers, representatives of the transportation industry, consumer groups and others as a means of correcting marketing inefficiencies or eliminating restrictions.

History: En. Sec. 1, Ch. 330, L. 1969.

Title of Act

An act to establish within the department of agriculture of the state of Mon-

tana an agricultural marketing co-ordinator and empower the co-ordinator to analyze, advise, and make necessary recommendations in the field of agricultural marketing.

3-117. Definitions. As used in this act unless the context indicates otherwise:

(1) "Marketing" means the sum total of activities involved in getting agricultural products from the producer to the consumer and it includes transportation, processing, and distribution.

(2) "Agricultural products" means crops, livestock and livestock products.

(3) "Commissioner" means commissioner of agriculture.

History: En. Sec. 2, Ch. 330, L. 1969.

3-118. Agricultural marketing co-ordinator — qualifications — responsibilities. (1) There shall be within the department of agriculture of the state of Montana an agricultural marketing co-ordinator. He shall be a graduate of an accredited college with a master's degree in marketing or related field; he must possess the ability to plan, organize and carry out an effective marketing program; he must possess the ability to work harmoniously with other staff members and professional members in other organizations and industry; and he must have a minimum of two (2) years' experience in marketing or related fields.

(2) The co-ordinator is primarily responsible for providing leadership in marketing. He must keep informed in the subject matter related to this assignment. His major responsibility is to identify major needs and establish priorities in marketing and assist in developing marketing programs that will be directed toward a solution of these needs.

History: En. Sec. 3, Ch. 330, L. 1969.

Cross-References

Co-ordinator's position abolished and functions transferred, sec. 82A-302(2).

3-119. Co-ordinator's duties. It shall be the duty of the marketing co-ordinator:

(1) To keep abreast of research results in the subject matter area of marketing;

(2) To co-ordinate work with local, state and national planning groups and other interested parties in helping them identify major problem areas and needs in marketing;

(3) To develop and carry out appropriate action programs that will result in significant improvements being made by those people concerned with problems of marketing;

(4) To co-ordinate efforts with representatives of other agencies or organizations or persons who are concerned with related programs;

(5) To investigate the costs of marketing;

(6) To gather and disseminate information concerning supply, demand,

favorable marketing information, prevailing prices, and changes in marketing movements, practices and rates, including common and cold storage of food products;

(7) To promote, assist and encourage the organization and operation of co-operative and other associations and organizations for improving the relations and services among producers, distributors and consumers of food products;

(8) To investigate the practice and methods concerning the marketing of agricultural products;

(9) To act as mediator or arbitrator, when invited, in any controversy or issue that may arise between producers and distributors;

(10) To assist producers and distributors in the economical and efficient distribution of agricultural products at fair prices;

(11) Appear and be heard at any hearing involving agricultural marketing affecting Montana.

History: En. Sec. 4, Ch. 330, L. 1969.

3-120. Co-ordinator under supervision of commissioner of agriculture.

The agricultural marketing co-ordinator shall be under the supervision of the commissioner of agriculture of the state of Montana.

History: En. Sec. 5, Ch. 330, L. 1969.

3-121. Agricultural marketing advisory body—composition—meetings—duties—reimbursement. There is an agricultural marketing advisory body. It shall consist of nine (9) members. The dean of the school of agriculture at Montana state university, and the commissioner of agriculture shall be ex officio members. Seven (7) members shall be appointed by the commissioner of agriculture from representatives from transportation, representatives from farm and commodity organizations, representatives from the field of processing, representatives from the field of retailers and representatives of research and educational institutions. No more than four (4) of those members appointed shall be from the same political party, and those appointed shall serve at the pleasure of the commissioner. This advisory body shall meet at the call of the commissioner, but at least once a year. This advisory body shall advise, assist and direct the marketing co-ordinator in implementing the provisions of this act. They shall receive reimbursement for necessary expenses incurred in carrying out the provisions of this act.

History: En. Sec. 6, Ch. 330, L. 1969.

Cross-References

Advisory body abolished, sec. 82A-305 (1).

3-122. Co-ordinator's recommendations — commissioner's reports. (1)

The agricultural marketing co-ordinator shall make written recommendations to the commissioner concerning the needs for the development of new and improved systems for marketing agricultural products. He shall also recommend changes or additions for improved marketing services.

(2) The commissioner shall submit an annual written report to the governor on or before October 1 of each year containing the findings,

conclusions, and recommendations of the agricultural marketing co-ordinator. He may also submit a report to the next legislative assembly.

History: En. Sec. 7, Ch. 330, L. 1969.

3-123. State agencies participating in marketing to co-operate. All agencies of the state of Montana who participate in marketing as defined in section 2 [3-117], subsection (1) of this act shall co-operate and assist with the agricultural marketing co-ordinator.

History: En. Sec. 8, Ch. 330, L. 1969.

CHAPTER 2—GRAIN STANDARDS—STORAGE AND INSPECTION— REGULATION OF GRAIN WAREHOUSEMEN

Section

3-228. Bond—license and fees of warehouseman, track buyer, grain dealer and others—penalty for operating without a license.

3-202. (3575.2) Repealed.

Repeal

Section 3-202 (Sec. 2, Ch. 124, L. 1927; Sec. 2, Ch. 31, L. 1933; Sec. 2, Ch. 146, L. 1939; Sec. 1, Ch. 109, L. 1945; Sec. 1, Ch. 163, L. 1947; Sec. 1, Ch. 89, L. 1953; Sec.

1, Ch. 85, L. 1957; Sec. 1, Ch. 145, L. 1961), relating to fees to be paid to state sealer of weights and measures, was repealed by Sec. 43, Ch. 99, Laws 1969.

3-228. (3589) Bond—license and fees of warehouseman, track buyer, grain dealer and others—penalty for operating without a license. Each person, firm, corporation or association or persons operating any public warehouse or warehouses subject to the provisions of this act, and every track buyer, grain dealer, broker, or commission man, or person or association of persons, merchandising in grain shall, on or before the first day of July each year, give a bond executed by a corporate surety authorized to do business in the state of Montana to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by section 3-229, R.C.M. 1947.

Every person or persons, firm, copartnership, corporation, or association of persons, operating any public warehouse or warehouses, and every track buyer, grain dealer, broker, commission man, person or association of persons merchandising grain in the state of Montana, shall, on or before the first day of July of each year, pay to the state treasurer of Montana a license fee in the sum of fifteen dollars (\$15) for each and every warehouse, elevator, truck, tractor-trailer unit, or other place, owned, conducted or operated by such person or persons, firm, copartnership, corporation or association of persons, where or in which grain is received, stored and/or shipped, and upon the payment of such fee of fifteen dollars (\$15) for each and every warehouse, elevator, truck, tractor-trailer unit, or other place, where or in which grain is merchandised within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, copartnership, corporation or association of persons, a license to engage in grain merchandising at the place or with the licensed units

designated within the state of Montana, for a period of one (1) license year or any part thereof, and save further that a producer may be permitted to deliver his own grain. And save further that a producer may buy and haul grain for his own use and that of his neighbors in his community, and save further that the operator of a feed lot in the state of Montana may buy and haul grain in his own vehicle or one in his own use for use on his own lot and save further that a custom combiner in hauling grain that he combines shall be exempt from this act. All other persons hauling grains for hire as defined in section 8-101, R.C.M. 1947, shall give a bond executed by a corporate surety authorized to do business in the state of Montana to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them on account of or acting as an agent for another.

Persons hauling grain for hire, who do not acquire title to the same, shall be specifically exempt from the bonding and licensing requirements of this section if they are hauling grain for any elevator or warehouse already bonded and licensed under this section.

Every track buyer, grain dealer, broker, commission man, person or association of persons merchandising grain in the state of Montana, not otherwise required to be licensed by the provisions of this act, and not exempted from the licensing requirements, shall, on or before the first day of July of each year, pay to the state treasurer of Montana a license fee in the sum of fifteen dollars (\$15) and upon the payment of such fee of fifteen dollars (\$15) the commissioner of agriculture shall issue to such track buyer, grain dealer, broker, commission man, person or association of persons a license to engage in grain merchandising in the state of Montana for a period of one (1) license year or any part thereof. Any person, firm, association or corporation who shall engage in or carry on any business or occupation for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500), and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

In addition to the bond and license fee, a public warehouseman shall carry adequate insurance approved by the commissioner of agriculture to protect the holders of warehouse receipts from loss. A public warehouseman license shall not be issued or may be revoked for failure to comply with this insurance requirement.

History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 1, Ch. 145, L. 1959; amd. Sec. 3, Ch. 224, L. 1961; amd. Sec. 1, Ch. 27, L. 1963; amd. Sec. 1, Ch. 412, L. 1971.

Amendments

The 1971 amendment deleted the proviso to the first paragraph; deleted "save only that a public warehouseman shall be per-

mitted to deliver grain previously stored with him" before "and save further" near the end of the first sentence of the second paragraph; inserted "in his own vehicle or one in his own use" before "for use on his own lot" in the second sentence of the second paragraph; added "and save further that a custom combiner in hauling grain that he combines shall be exempt from this act" to the second sentence of the second paragraph; added the third

sentence of the second paragraph; inserted the third paragraph; inserted the first sentence of the fourth paragraph; and made

numerous changes in style, punctuation and phraseology.

CHAPTER 4—FARM STORAGE OF GRAIN AS BASIS FOR FARM CREDIT— INSPECTION AND CERTIFICATION

3-402. (3592.11) Farm storage commissioner.

Cross-References

Commissioner's office abolished and functions transferred, sec. 82A-302(3).

CHAPTER 8—AGRICULTURAL SEEDS

Section

3-802.1. Definitions.

3-802.2. Labeling of agricultural seeds.

3-802.3. Labeling of vegetable and flower seeds.

3-803. Exception of seeds, when.

3-820. Prohibitions.

3-821. Commissioner of agriculture empowered to revise classifications—hearing—order.

3-801, 3-802. (3593, 3594) Repealed.

Repeal

Sections 3-801 and 3-802 (Secs. 1, 2, Ch. 12, L. 1913; Sec. 1, Ch. 110, L. 1929; Sec. 1, Ch. 192, L. 1937; Secs. 2, 3, Ch. 88, L.

1939; Secs. 1, 2, Ch. 155, L. 1951; Sec. 1, Ch. 168, L. 1961), relating to the labeling of agricultural seeds, were repealed by Sec. 7, Ch. 361, Laws 1969.

3-802.1. Definitions. Terms used in this act and not otherwise identified are hereby defined:

(1) Agricultural seeds shall be the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds, and shall include lawn seeds and mixtures of seeds.

(2) Vegetable seeds shall include the seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds.

(3) Flower seeds shall include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and are commonly known and sold under the name of flower seeds in this state.

(4) (a) The term "weed seeds" shall include the seeds or bulblets of all plants generally recognized as weeds within this state, and shall include noxious weed seeds.

(b) Noxious weed seeds are hereby divided into two (2) groups defined as follows:

1. "Prohibited noxious weed seeds" are the seeds of perennial and other serious weeds that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts, and which when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds shall include the seeds of:

Canada thistle	(<i>Cirsium arvense</i>)
	(<i>Carduus arvensis</i>)
Leafy spurge	(<i>Euphorbia esula</i>)
White top	[<i>Lepidium cardaris draba</i>]
(Perennial peppergrass)	(<i>Cardaria draba</i>)
(Hoary cress)	(<i>Cardaria pubescens</i>)
Quack grass	(<i>Agropyron repens</i>)
Russian knapweed	(<i>Centaurea picris</i>)
Perennial sow thistle	(<i>Sonchus arvensis</i>)
Wild morning glory	(<i>Convolvulus arvensis</i>)
(Field bindweed)	
Dalmatian toadflax	(<i>Linaria dalmatica</i>)
Halogeton	(<i>Halogeton glomeratus</i>)
Medusa-head wildrye	(<i>Elymus caput-medusae</i>)
Creeping bell flower	(<i>Campanula rapunculoides</i>)
Common toadflax	(<i>Linaria vulgaris</i>)

2. "Restricted noxious weed seeds" are the seeds of weeds that are very objectionable in fields, lawns and gardens of this state, but can be controlled by good cultural practices. Restricted noxious weed seeds shall include the seeds of:

Dodder	(<i>Cuscuta</i> spp.)
Blue flowering lettuce	(<i>Lactuca pulchella</i>)
St. Johnswort	(<i>Hypericum perforatum</i>)
(Klamath-weed)	
Ox-eye daisy	(<i>Chrysanthemum leucanthemum</i>)
Spotted knapweed	(<i>Centaurea maculosa</i>)
Hoary false alysium	(<i>Berteroa incana</i>)
Wild oats	(<i>Avena fatua</i>)
Buckhorn plantain	(<i>Plantago lanceolata</i>)
Chickweed	(<i>Stellaria</i> spp.)
Curled dock	(<i>Rumex crispus</i>)

(5) The term "hybrid" applied to kinds of varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) two or more selected clones, seed lines, varieties, or species. "Controlling the pollination" means to use a method hybridization which will produce pure seed which is at least seventy-five per cent (75%) hybrid seed. Hybrid designations shall be treated as variety names.

(6) The terms "approximate percentage" and "approximate number" shall mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the Association of Official Seed Analysts of North America.

(7) The term "percentage of germination" shall mean the percentage of seeds which show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of

seed, as specified in the "rules for seed testing" adopted by the Association of Official Seed Analysts of North America.

(8) The term "name of state in which the seed was grown" shall mean any of the several states of the United States or the foreign country.

(9) The term "other crop seeds" shall mean any agricultural, vegetable, or flower seeds other than the seed or the mixture of seeds under consideration.

(10) The term "sell" shall include "offer for sale," "expose for sale," "have in possession for sale," "exchange," "barter," or "trade." It shall also include agricultural seeds which are furnished to growers for the production of a crop on contract.

History: En. Sec. 1, Ch. 361, L. 1969.

Title of Act

An act to provide a uniform agricultural seed law defining seeds and regulat-

ing the sale and labeling of seeds by amending section 3-803 and by repealing sections 3-801, 3-802, 3-816, 3-817, 3-818, 3-819, R. C. M. 1947.

3-802.2. Labeling of agricultural seeds. The owner, vendor, or person in possession of each and every package, parcel, or lot of agricultural seeds, as defined in the first section [3-802.1] of this act, that contains one (1) pound, or more, of agricultural seeds, whether in package or in bulk, shall before offering the seeds for sale affix in a conspicuous place on the exterior of the container a written or printed label in the English language in legible type or copy and the label shall contain a statement specifying:

(1) A lot number or other distinguishing mark.

(2) Kind. The name of each kind of seed present in excess of five per cent (5%) shall be shown on the label and need not be accompanied by the word "kind." When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of five per cent (5%) and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

Variety. (a) The following kinds of agricultural seeds are generally labeled as to variety and shall be labeled to show the variety name or the words "Variety Not Stated":

Alfalfa	Oat
Barley	Pea, field
Bean, field	Rye
Beet, field	Safflower
Brome, smooth	Sorghum
Clover, crimson	Sorghum-Sudan hybrid
Clover, red	Soybean
Clover, white	Sudangrass
Corn, field	Sunflower
Corn, pop	Trefoil, Birdsfoot
Fescue, tall	Wheat, common
Flax	Wheat, Durum
Millet, foxtail	

(b) If the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety." The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of five per cent (5%) and are named on the label, the name of each variety shall be accompanied by the percentage of each.

(3) If any one kind or kind and variety of seed present in excess of five per cent (5%) is "hybrid" seed, it shall be designated "hybrid" on the label. The percentage that is hybrid shall be at least ninety-five per cent (95%) of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of five per cent (5%) and are named on the label, each that is hybrid shall be designated as hybrid on the label. Any one kind or kind and variety that has pure seed which is less than ninety-five per cent (95%) but more than seventy-five per cent (75%) hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show (a) the percentage of pure seed that is hybrid seed or (b) a statement such as "Contains from seventy-five per cent (75%) to ninety-five per cent (95%) hybrid seed." No one kind or variety of seed shall be labeled as hybrid if the pure seed contains less than seventy-five per cent (75%) hybrid seed.

(4) Origin, state or foreign country if known, of alfalfa, red clover, white clover, native range grasses and field corn other than hybrid. If the origin is unknown, the fact shall be stated.

(5) The approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately; with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination, and stated as "total germination and hard seed."

(6) The approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds.

(7) The approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds.

(8) The approximate total percentage by weight of weed seeds.

(9) The approximate percentage by weight of other crop seeds in agricultural seeds.

(10) The name and approximate number of each kind or species of restricted noxious weed seeds occurring in excess of nine (9) weed seeds per pound of agricultural, vegetable, or flower seeds.

(11) The full name and address of the seedsman, importer, dealer or agent, other person or persons, or firm or corporation selling the agricultural seed.

(12) In the case of mixtures of agricultural seeds which contain two

(2) or more kinds of seed in excess of five per cent (5%) by weight of each, when sold as mixtures:

(a) Name of mixture.

(b) The name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of five per cent (5%) by weight of the total mixture.

(c) Approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds.

(d) Approximate percentage by weight of weed seeds as defined in the first section [3-802.1] of this act.

(e) Approximate percentage by weight of other crop seed in the mixture of agricultural seeds.

(f) The name and approximate number of each kind or species of restricted noxious weed seeds occurring in excess of nine (9) weed seeds per pound of mixtures of agricultural seeds, subject, however, to restrictions as specified in the fourth section [3-820] of this act.

(g) Approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of five per cent (5%) by weight, together with the month and year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed."

(h) Full name and address of the vendor of the mixture.

History: En. Sec. 2, Ch. 361, L. 1969.

3-802.3. Labeling of vegetable and flower seeds. Vegetable and flower seeds in packets and in larger containers shall be labeled with the required information as follows:

(1) Each container of one (1) pound or less:

(a) The commonly accepted name of the kind or the kind and variety of the seed.

(b) The name and address of the person who labeled the seed or who sells the seed within this state.

(c) The name and number per pound of each kind of restricted noxious weed seeds as prescribed in section 4 [3-820] of this act.

(d) In the case of seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act:

1. The percentage of germination.

2. The percentage of hard seed, if more than one per cent (1%).

3. The month and year the test to determine the data required by this section was completed.

4. The words "below standard germination" in not less than eight (8) point boldface type.

- (2) Each container of more than one (1) pound:
 - (a) The name of the kind and variety of the contents.
 - (b) The lot numbers or other lot identification.
 - (c) The name and number per pound of each kind of restricted noxious weed seed as prescribed in section 4 [3-820] of this act.
 - (d) The percentage of germination and whether the percentage of germination meets or exceeds the standard established in the Federal Seed Act.
 - (e) The percentage of hard seed, if more than one per cent (1%).
 - (f) The month and year the test to determine the data required by this section was completed.
 - (g) The name and address of the person who labeled the seed or who sells the seed within this state.

History: En. Sec. 3, Ch. 361, L. 1969. United States Code as Tit. 7, sec. 1551 et seq.

Compiler's Notes

The Federal Seed Act is compiled in the

3-803. (3595) Exception of seeds, when. Agricultural seeds or mixtures of same shall be exempt from the provisions of this act:

- (1) When possessed, exposed for sale, or sold for food purposes only.
- (2) When sold to merchants or dealers to be recleaned before being sold or offered for sale for seeding purposes.
- (3) When in store for the purpose of recleaning or not possessed, sold or offered for sale for seeding purposes within the state.

History: En. Sec. 3, Ch. 12, L. 1913; re-en. Sec. 3595, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1939; amd. Sec. 6, Ch. 361, L. 1969. a processor of sugar beets to growers contracting the growing and delivery of sugar beets to such vendor or distributor."

Amendments

The 1969 amendment deleted former subdivision (4) exempting seeds "sold by

Repealing Clause

Section 7 of Ch. 361, Laws 1969 read "Sections 3-801, 3-802, 3-816, 3-817, 3-818 and 3-819 R. C. M. 1947, are repealed."

3-816 to 3-819. Repealed.

Repeal

Sections 3-816 to 3-819 (Secs. 1 to 4, Ch. 196, L. 1961), relating to the labeling of

vegetable and flower seeds, were repealed by Sec. 7, Ch. 361, Laws 1969.

3-820. Prohibitions. No person, firm, corporation, copartnership or association shall sell or transport for use in planting in the state of Montana any agricultural, vegetable or flower seed that:

- (1) Contains prohibited noxious weed seeds.
- (2) Contains restricted noxious weed seeds in excess of the maximum numbers per pound as follows:

Species		Number allowed per pound
Dodder	(<i>Cuscuta</i> spp.)	18
Blue flowering lettuce	(<i>Lactuca pulchella</i>)	27
St. Johnswort (Klamath-weed)	(<i>Hypericum perforatum</i>)	27
Ox-eye daisy	(<i>Chrysanthemum leucanthemum</i>)	90
Spotted knapweed	(<i>Centaurea maculosa</i>)	18
Hoary false alyssum	(<i>Berteroa incana</i>)	9
Wild oats	(<i>Avena fatua</i>)	45
Buckhorn plantain	(<i>Plantago lanceolata</i>)	90
Chickweed	(<i>Stellaria</i> spp.)	9
Curled dock	(<i>Rumex crispus</i>)	45

(3) Contains in excess of two per cent (2%) or more of weed seed.

(4) Is offered or exposed for sale more than nine (9) calendar months from the last day of the month in which the germination test was completed. This nine (9) month limitation shall not apply when seed is packaged in hermetically sealed containers within twelve (12) months after harvest. The container must be conspicuously labeled in not less than eight (8) point type to indicate:

(a) That the container is hermetically sealed.

(b) That the seed has been preconditioned as to moisture content.

(c) That the germination test is valid for a period not to exceed eighteen (18) months from the date of the germination test for seeds offered for sale on a wholesale basis, and for a period not to exceed thirty-six (36) months for seeds offered for sale at retail.

(d) That the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August 1963, with subsequent revisions.

(5) Is represented in any manner to be for lawn seeding purposes, unless it contains at least fifty per cent (50%) pure seed of perennial fine-leaf species which shall be specified by rules and regulations pursuant to this act. However, grass mixtures which do not contain fifty per cent (50%) pure seed of perennial fine-leaf grasses may be sold. When these grass mixtures are contained in packages of twenty-five (25) pounds or less, they shall carry the statements: "Not recommended for a fine-leaf perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable." A definition of fine-leaf varieties to be promulgated in the regulations is as follows:

(a) Bluegrasses—all varieties except Canada Bluegrass (*Poa compressa*) and Annual Bluegrass (*Poa annua*).

(b) Chewings Red Fescue and all improved varieties.

(c) Creeping Red Fescue and all improved varieties.

(d) Bentgrass—all varieties.

(e) Fine-Leafed Ryegrasses.

History: En. Sec. 4, Ch. 361, L. 1969.

3-821. Commissioner of agriculture empowered to revise classifications—hearing—order. The commissioner of agriculture may, with the written approval of the director of the Montana experiment station recorded prior to or within ten (10) days after the public hearing, prescribed herein, add to or remove from, revise, or modify the foregoing groups and classifications of noxious weed seeds, and the noxious weed seeds within any groups or classifications, as the circumstances may require in aid of the purpose of this act to prevent or diminish the distribution and occurrence of such noxious weed seeds within the state of Montana, but no additions, removals or modifications shall be made without a full public hearing, on adequate and informative written or published notice plainly stating the exact additions, removals or modifications proposed to be made, and said notice shall be given by the commissioner at least thirty (30) days before the day set for said hearing and shall state the time and place of said hearing, and said notice shall be published in three (3) newspapers of general circulation in the state, and such notice shall be mailed to all associations of seed dealers in the state who are organized on a state-wide basis. If any revision or modification is determined to be made as a result of any such hearing, the same shall be promulgated by a written order of the commissioner, countersigned "approved" by the director of the Montana experiment station, plainly stating the revisions or modifications and the effective date or dates thereof, and any and all qualifications, exceptions or conditions connected with such revisions or modifications.

History: En. Sec. 5, Ch. 361, L. 1969.

CHAPTER 14—STANDARD GRADES AND BRANDS FOR MONTANA FARM PRODUCTS

Section

- 3-1401. Standard grades for Montana farm products.
- 3-1402. Definitions.
- 3-1403. Commissioner to establish standard grades—notice required.
- 3-1404. Grading and branding of products required—labeling of culls.
- 3-1405. Unlawful to sell or transport products unless labeled, tagged or branded—use of tags.
- 3-1406. Inspection of condition of products in storage or transit.
- 3-1407. Enforcement of act.
- 3-1409. Intent and purpose of act.
- 3-1410. Violation of provisions—penalty.

3-1401. (3633.1) Standard grades for Montana farm products. The standard grades for Montana farm products and other farm products shall be limited to the United States grades covering the same products and shall conform in all respects and be identical with the latest standards established by the United States secretary of agriculture for the various commodities, and thus conforming shall be accepted as the legal standards for the state of Montana.

History: En. Sec. 1, Ch. 165, L. 1933;
amd. Sec. 1, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "and other farm products" after "Montana farm products."

3-1402. (3633.2) Definitions. The following terms, whenever used in this act, or in rules and regulations later promulgated by the commissioner of agriculture, shall have the meaning as indicated:

(a) "Commissioner" shall mean the commissioner of agriculture of the Montana department of agriculture.

(b) The term "Montana farm products" shall mean all products of the farm grown commercially in Montana intended for table use such as potatoes, cherries, and dry beans. The term "Montana farm products" shall not be limited to those farm products grown in Montana but shall include like products grown outside this state.

(c) The term "other farm products" shall mean all farm products which are not normally grown commercially in Montana such as grapefruit and oranges; but in either subsection (b) or (c) these terms shall not include livestock and its by-products; poultry and its products; apiary products; dairy products; grain and apples.

(d) "Container" or "package" shall mean cloth or fibre sacks, barrel, box, crate, carton, hamper or baskets, such as are customarily used for the shipment of Montana farm products and other farm products.

(e) "Person" as used herein shall mean any grower, dealer, shipper, society, association, organization, corporation or their agents or representatives.

History: En. Sec. 2, Ch. 165, L. 1933; amd. Sec. 2, Ch. 79, L. 1969.

Amendments

The 1969 amendment rewrote subsection (b), changing the term defined from "farm products" to "Montana farm prod-

ucts"; inserted a new subsection (c), redesignated former subsections (c) and (d) as new subsections (d) and (e); inserted "Montana" before "farm products" in subsection (d) and added "and other farm products" at the end of that subsection.

3-1403. (3633.3) Commissioner to establish standard grades—notice required. (a) The commissioner of agriculture shall at once establish in the manner provided by this act, United States standard grades on potatoes, dry beans, cherries and shall thereafter, as soon as any Montana farm product or other farm product shall have reached a volume rendering it of market importance, establish United States grades on same.

(b) The commissioner of agriculture shall establish grades and designate Montana farm products and other farm products by proclamation, giving thirty (30) days' notice of such action, and shall publish such proclamation two (2) times in at least three (3) papers of general circulation within the state.

History: En. Sec. 3, Ch. 165, L. 1933; amd. Sec. 3, Ch. 79, L. 1969.

Amendments

The 1969 amendment, in subsection (a), deleted provisions for standard grades for onion, head lettuce and cabbage, inserted

"dry" before "beans" and "cherries" after "beans," and substituted "Montana farm product or other farm product" for "agricultural product"; in subsection (b), inserted "and designate Montana farm products and other farm products" after "establish grades."

3-1404. (3633.4) Grading and branding of products required—labeling of culls. (a) It shall be unlawful for any person, firm, association, organization, corporation or their agents or representatives or assistant of any person, firm, association, organization or corporation to pack for sale, expose for sale, or sell, transport, deliver or consign, or have in possession

for sale, transport, delivery or consignment in interstate or intrastate commerce,

(1) Montana farm products and other farm products prepared for market which are not graded and branded to meet the requirement of the grade declared. The grade declared shall conform to the provisions of this act.

(2) Other farm products which includes products arriving or found in Montana in containers not graded and branded must meet the requirements of United States No. 1 grade or better. Those products which do not grade United States No. 1 or better must be labeled or tagged with proper grade according to Montana inspection.

(b) Provided that Montana farm products and other farm products not conforming to established grades may be sold if labeled, tagged or branded in the same manner as graded products, except that in place of specifying the grade, the word "culls" or "unclassified" shall be used.

(c) Provided that all products branded "unclassified" must contain at least fifty per cent (50%) of products which would grade United States No. 2, or better.

(d) Provided further that Montana farm products and other farm products for seed purposes may be sold when graded under rules approved by the commissioner of agriculture and plainly labeled, tagged or branded "For Seed Purposes."

(e) Provided further that United States commercial grade shall be a standard grade in the state of Montana.

(f) Provided further that oranges labeled "choice" shall meet the requirements of the United States No. 2 grade or better for oranges.

History: En. Sec 4, Ch. 165, L. 1933; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963; amd. Sec. 4, Ch. 79, L. 1969.

Amendments

The 1969 amendment designated the latter portion of subsection (a) as sub-

division (1), inserted "Montana farm products and other" before "farm products prepared for market," added subdivision (2); inserted "Montana farm products and other" before "farm products" in subsections (b) and (d) and added subsection (f).

3-1405. (3633.5) Unlawful to sell or transport products unless labeled, tagged or branded—use of tags. (a) It shall be unlawful for any person, firm, association, organization or corporation, or agent, representative or assistant to any person, firm, association, organization or corporation, to expose for sale, or sell, transport, deliver or consign, or have in possession Montana farm products and other farm products prepared for market unless each container has been legibly and conspicuously tagged, branded, labeled or stenciled before being moved from the premises of the person or persons responsible for the grading and packing, the name of the grade, when applicable together with the true net contents expressed in weight.

(b) When tags are used, United States No. 1 grade shall be declared on a white tag, and United States No. 2 grade shall be declared on a red tag. Bulk shipments shall be accompanied by two (2) cards not less than four by six inches (4" x 6") in size, placed on the inside of the car near each door. Likewise cards in size herein described shall be prominently placed on all bulk shipments made by truck or other conveyance.

Upon each card shall appear the name and address of the consignor, the name of the grade, if applicable, the name of the loading station, the date of loading and the name and address of the consignee, if known. It shall be conclusive evidence that the farm products are deemed for sale when the containers are packed for delivery or transit, or when same are exposed for sale, or when same are in process of delivery or transit, or located at a depot, station, boat dock, or any place where farm products, or other products are held for storage, or for immediate or future sale or transit.

History: En. Sec. 5, Ch. 165, L. 1933;
amd. Sec. 5, Ch. 79, L. 1969.

Amendments

The 1969 amendment, in subsection (a), inserted "Montana farm products and

other" before "farm products" and "when applicable" after "the name of the grade"; and in subsection (b), inserted "if applicable" after "the name of the grade."

3-1406. (3633.6) Inspection of condition of products in storage or transit. Montana farm products and other farm products held in storage or in transit which at the time of inspection show deterioration or decay, but otherwise up to the grade, shall be inspected as to condition and not as to grade.

History: En. Sec. 6, Ch. 165, L. 1933;
amd. Sec. 6, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" at the beginning of this section.

3-1407. (3633.7) Enforcement of act. The commissioner of agriculture is hereby charged with the enforcement of this act and is given power unto himself and to his duly appointed representatives to enter into and upon the premises where Montana farm products and other farm products are graded or packed or stored, to inspect the same as to grade, pack and condition.

History: En. Sec. 7, Ch. 165, L. 1933;
amd. Sec. 7, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" before "farm products."

3-1409. (3633.9) Intent and purpose of act. The intent and purpose of this act is to regulate the sale of Montana farm products and other farm products for table use intended for interstate or intrastate commerce when such is made by the grower, dealer or distributor, or any other person either by wholesale or retail or in any other manner; provided, however, that the provisions of this act shall not apply to the grower in the sale of the Montana farm products and other farm products grown by himself or to small retail packages.

History: En. Sec. 9, Ch. 165, L. 1933;
amd. Sec. 8, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" before "farm products" in two instances in this section.

3-1410. (3633.10) Violation of provisions—penalty. Whoever violates this act by not grading Montana farm products and other farm products as herein required, or by not tagging or branding containers as herein re-

quired, or by removing or altering any tag or brands placed upon or attached to any containers as in this act required, unless ordered to do so by the commissioner of agriculture, or his duly appointed representative or representatives, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars (\$10.00), nor more than one hundred dollars (\$100.00), or by imprisonment in the county jail not less than thirty (30) days nor more than three (3) months, or by both such fine and imprisonment in accordance with the discretion of the court.

History: En. Sec. 10, Ch. 165, L. 1933;
amd. Sec. 9, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" before "farm products."

CHAPTER 17—COMMERCIAL FERTILIZER—REGULATION OF SALE

Section

- 3-1729. Assessment to fund educational and experimental programs—collection.
- 3-1730. Allocation of assessments.
- 3-1731. Educational and experimental programs.
- 3-1732. Advisory committee—appointment and composition.
- 3-1733. Term of office.
- 3-1734. Meetings and functions of advisory committee.

3-1729. Assessment to fund educational and experimental programs—collection. Moneys to fund this act will be produced by an assessment of thirty-five cents (\$0.35) per ton of fertilizer sold within Montana. Collections shall be made in accordance with procedures in sections 3-1717 and 3-1721, R.C.M. 1947, and shall be collected from the "registrant" of fertilizer.

History: En. Sec. 1, Ch. 397, L. 1971.

Title of Act

An act providing for an assessment on fertilizer to produce funds for the Montana co-operative extension service and the Montana agricultural experiment station

of Montana state university, Bozeman, for a statewide fertilizer and related soil management program of education and research correlated with soil testing; providing an effective date; and providing an expiration date.

3-1730. Allocation of assessments. The assessment shall be collected by the Montana department of agriculture and up to one per cent (1%) shall be retained by the department of agriculture for costs of collection and the balance will be deposited in an earmarked revenue fund with fifty per cent (50%) for use by the Montana co-operative extension service and fifty per cent (50%) for use by the Montana agricultural experiment station of Montana state university, Bozeman, in programs recommended by the advisory committee, established in section 4 [3-1732] of this act, and approved by the respective directors.

History: En. Sec. 2, Ch. 397, L. 1971.

3-1731. Educational and experimental programs. The moneys provided by this act shall be used for comprehensive statewide educational and experimental programs aimed at optimum use of fertilizers for feed and food production.

Major goals are to improve Montana's economy by providing farmers and ranchers the most accurate information possible about fertilizer use and soil management for greatest profits consistent with environment protection on the many varied soil and climatic conditions of the state.

History: En. Sec. 3, Ch. 397, L. 1971.

3-1732. Advisory committee — appointment and composition. The advisory committee shall represent fertilizer users of Montana and shall be appointed by the dean of agriculture, Montana state university, with the approval of the following: chairman of the Montana house of representatives agriculture and irrigation committee; chairman of the Montana senate agriculture committee; chairman of the Montana plant food association or its successor organization; director of Montana co-operative extension service; and director of Montana agricultural experiment action.

History: En. Sec. 4, Ch. 397, L. 1971.

3-1733. Term of office. The advisory committee members shall be appointed for five (5) year terms; however, first appointments shall be for one, two, three, four and five-year duration for the five (5) members, respectively, with an appointment made each year thereafter. No one shall serve more than seven (7) consecutive years.

History: En. Sec. 5, Ch. 397, L. 1971.

3-1734. Meetings and functions of advisory committee. The advisory committee shall meet a minimum of once each year with the directors of Montana co-operative extension service and agricultural experiment station to perform the following functions: (1) Review the educational and experimental programs financed by this act.

(2) Recommend needed programs and/or program adjustments.

(3) Report to the Montana house and/or senate agriculture committees as requested.

History: En. Sec. 6, Ch. 397, L. 1971.

Effective Date

Section 7 of Ch. 397, Laws 1971 read

"This act shall become effective on March 15, 1971 and will expire on March 15, 1975."

CHAPTER 19—MUSTARD SEED—GRADE REQUIREMENTS—PURCHASER'S
BOND AND LICENSE

Section

3-1902. Definitions and specifications.

3-1902. Definitions and specifications. The following definitions and specifications are hereby adopted and made legal:

(1) to (3) * * * [Same as parent volume.]

(4) **Foreign Material Other Than Dockage**—Foreign material other than dockage shall include all matter other than tame cultivated mustard seed, which is not separated in the proper determination of dockage; however, rapeseed, common wild mustards, and other seeds that blend with class 2 and class 3 mustard seed, and thus are not readily identified, and the total of which is not in excess of two and one-half per cent (2½%),

shall not be considered foreign material, and shall not be considered in grading said classes of mustard seed.

Basis of Determination: Each determination of dockage, temperature, odor and live weevil or other insects injurious to stored mustard seed, shall be upon the basis of the seed as a whole. All other determinations shall be upon the basis of the seed when free from dockage.

(5) * * * [Same as parent volume.]

(6) **Percentages of Moisture**—Percentage of moisture shall be that ascertained by use of the equipment and procedure prescribed by the Montana department of agriculture.

(7) **Percentage of Dockage**—Percentage of dockage shall be that ascertained by use of the equipment and procedure prescribed by the Montana department of agriculture.

(8) and (9) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 35, L. 1941; amd. Sec. 1, Ch. 31, L. 1971.

ture Tester and the method of use thereof described in U. S. D. A. Bulletin No. 1375 for testing flaxseed" in subdivision (6); and substituted "use of the equipment and procedure prescribed by the Montana department of agriculture" for "the Farrell Clipper Tester and Cleaner or any other cleaning device that will give equivalent results" in subdivision (7).

Amendments

The 1971 amendment added to the first paragraph of subdivision (4) the language following the semicolon therein; substituted "use of the equipment and procedure prescribed by the Montana department of agriculture" for "the Brown-Duval Mois-

CHAPTER 22—POULTRY IMPROVEMENT

3-2201. Powers and duties of commissioner of agriculture.

Cross-References

Advisory board abolished, sec. 82A-305(2).

Commissioner's functions transferred to department of livestock, sec. 82A-1302.

CHAPTER 23—EGGS AND EGG DEALERS—LICENSE

Section

3-2301. Egg dealer's license—fee.

3-2306. Egg—when defined as unfit for human food.

3-2307. Imported eggs—labeling.

3-2310. Rules and regulations for enforcement of act to be made by commissioner.

3-2301. (2634.1) Egg dealer's license—fee. Every person engaged in the business of buying, selling or dealing in eggs, except those persons or firms who do not buy and sell at retail more than an average of 25 cases of eggs per month for any one year, other than those produced by fowl owned by such persons, shall obtain a license from the commissioner of agriculture for each establishment at which said business is conducted, and shall render to the commissioner of agriculture such reports as may be requested by said commissioner. The fee for such license shall be five dollars (\$5.00) per year for dealers buying eggs for sale at retail. The fee for such license shall be fifty dollars (\$50.00) per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses shall expire March 31st each year after the date of issuance.

History: En. Sec. 1, Ch. 189, L. 1931; Ch. 121, L. 1965; amd. Sec. 1, Ch. 176, L. amd. Sec. 1, Ch. 151, L. 1939; amd. Sec. 4, 1969.

Amendments

The 1969 amendment inserted "at retail" after "who do not buy and sell" in the first sentence and raised the license fee for dealers buying eggs for resale at wholesale from \$20.00 to \$50.00.

Cross-References

Commissioner's functions transferred to department of livestock, sec. 82A-1302.

3-2306. (2634.6) Egg—when defined as unfit for human food. Eggs hereinafter defined shall be deemed unfit for human food:

(a) "Addled," or "white rot" means an egg that is putrid or rotten.

(b) to (i) * * * [Same as parent volume.]

(j) An egg that is smashed or broken so that the contents are leaking.

(k) Eggs which are otherwise unwholesome or adulterated as such term is defined pursuant to the Federal Food, Drug and Cosmetic Act, and rules and regulations promulgated under authority of this act.

History: En. Sec. 6, Ch. 189, L. 1931; amd. Sec. 3, Ch. 151, L. 1939; amd. Sec. 2, Ch. 176, L. 1969.

Subdivision (a) is reprinted to correct an error in the parent volume.

Compiler's Notes

The definition of adulterated food in the Federal Food, Drug and Cosmetic Act is contained in United States Code, Tit. 21, sec. 342.

Amendments

The 1969 amendment added subdivisions (j) and (k).

3-2307. (2634.7) Imported eggs—labeling. All candled and graded eggs imported into the state of Montana must comply with the requirements of this act and must be inspected and passed by licensed Montana egg graders. The case or container and cartons in which they are shipped shall have the word "eggs" preceded by the name of the country or state where produced displayed thereon in legible boldface type letters at least three-sixteenths (3/16) inches high.

All wholesalers and retailers of said eggs shall sell them from the container in which he received them or may transfer said eggs to other containers or cartons having the word "eggs" preceded by the name of the country or state where produced displayed thereon in boldface type letters at least three-sixteenths (3/16) inches high.

History: En. Sec. 7, Ch. 189, L. 1931; amd. Sec. 4, Ch. 151, L. 1939; amd. Sec. 3, Ch. 176, L. 1969.

tion and, inter alia, deleted requirement that restaurants, etc. using foreign eggs conspicuously display a sign, in four-inch lettering, to that effect.

Amendments

The 1969 amendment rewrote this sec-

3-2310. (2634.10) Rules and regulations for enforcement of act to be made by commissioner. It shall be the duty of the commissioner of agriculture to enforce the provisions of this act and to make such rules and regulations as may be necessary for the enforcement of this act, including the processing, handling and marketing of egg products whether shell, liquid, frozen or dried.

History: En. Sec. 10, Ch. 189, L. 1931; amd. Sec. 4, Ch. 176, L. 1969.

Cross-References

Commissioner's functions transferred to department of livestock, sec. 82A-1302.

Amendments

The 1969 amendment added "including the processing * * * or dried" at the end of the section.

CHAPTER 24—MANUFACTURED DAIRY PRODUCTS

Section

- 3-2488. General authority of commissioner—committee to assist in first regulations.
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- 3-24-133. License required for butter or cheese wholesaler.
- 3-24-134. Requirements for containers and equipment.
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- 3-24-136. Labeling on manufactured dairy products to conform to requirements.
- 3-24-137. Penalties for violations.

3-2401 to 3-2403. (2620.1 to 2620.3) Repealed.**Repeal**

Sections 3-2401 to 3-2403 (Secs. 1 to 3, Ch. 93, L. 1929), relating to functions of

the department of agriculture, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2405 to 3-2431. (2620.5 to 2620.31) Repealed.**Repeal**

Sections 3-2405 to 3-2431 (Secs. 5 to 28, Ch. 93, L. 1929; Secs. 2 to 6, Ch. 39, L. 1931; Sec. 2, Ch. 68, L. 1937; Sec. 1, Ch. 134, L. 1953; Sec. 1, Ch. 45, L. 1961; Secs.

1, 2, Ch. 121, L. 1965; Sec. 5, Ch. 121, L. 1965), relating to licensing and other regulatory provisions, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2432, 3-2433. (2620.32, 2620.33) Repealed.**Repeal**

Sections 3-2432 and 3-2433 (Secs. 29, 30, Ch. 93, L. 1929; Sec. 7, Ch. 39, L. 1931; Sec. 1, Ch. 168, L. 1933), relating to

standard measures for dairy products, were repealed by Sec. 43, Ch. 99, Laws 1969.

3-2434. (2620.34) Repealed.**Repeal**

Section 3-2434 (Sec. 31, Ch. 93, L. 1929; Sec. 3, Ch. 68, L. 1937), relating to labeling

of creamery butter packages, was repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2436 to 3-2444. (2620.36 to 2620.44) Repealed.**Repeal**

Sections 3-2436 to 3-2444 (Secs. 33 to 39, Ch. 93, L. 1929; Secs. 8, 9, Ch. 39, L. 1931; Sec. 1, Ch. 98, L. 1941; Secs. 5, 6, Ch. 99,

L. 1953), relating to extraneous fats, butter, cheese and oleomargine, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2447 to 3-2472. (2620.47 to 2620.72) Repealed.**Repeal**

Sections 3-2447 to 3-2472 (Secs. 42 to 55, Ch. 93, L. 1929; Secs. 10, 11, Ch. 39, L. 1931; Sec. 1, Ch. 39, L. 1933; Secs. 4 to

7, Ch. 68, L. 1937; Sec. 3, Ch. 121, L. 1965), relating to milk and cream, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2476 to 3-2487. Repealed.**Repeal**

Sections 3-2476 to 3-2487 (Secs. 1 to 12, Ch. 172, L. 1953; Sec. 1, Ch. 20, L. 1963),

relating to ice cream and animal fat, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2488. General authority of commissioner—committee to assist in first regulations. The commissioner of agriculture of the state of Montana shall have the general authority to regulate, and to establish sanitation standards for persons operating dairies producing milk for manufacturing purposes; and to regulate, and establish sanitation and quality standards for any person engaged in the processing of manufactured dairy products, or of products made or sold in the semblance or imitation thereof, in the state of Montana when those products made in semblance or imitation of dairy products are made in a manufactured dairy products plant. For the purpose of promulgating these first original and unamended regulations, a committee composed of dairymen and manufactured dairy products plant operators, shall advise and assist the commissioner in the development and modification of such regulations.

This committee shall be selected in the following manner: Each manufactured dairy products plant operator and one of his regular milk producers shall be entitled to serve coequally with the commissioner in the development, modification and finalizing of such proposed original and unamended regulations. Prior to such committee meeting the commissioner

shall inform all manufactured dairy products plant operators concerned, of their right to serve on the above-mentioned committee. Notification of such committee meeting shall be given to each manufactured dairy products plant operator concerned not less than thirty (30) days in advance of such scheduled committee meeting.

Failure upon the part of any manufactured dairy products plant operator and/or his selected milk producer to appear at such committee meeting shall constitute a waiver of his rights as provided for above.

History: En. Sec. 1, Ch. 413, L. 1971.

Title of Act

An act to be known as the Manufactured Dairy Products Act, repealing all of the present dairy products act and regulations contained in Montana statutes, Title 3, sections 3-2401 through 3-2403; 3-2405 through 3-2431; 3-2434; 3-2436 through 3-2444; 3-2447 through 3-2472; 3-2476 through 3-2487; providing for the authority and duties of the commissioner of agriculture with respect to this act; defining those products and procedures regulated by this act; providing for the licensing and license fees for dairies producing milk for manufacturing purposes, and for manufactured dairy products plants as defined; providing for the same licensing and regulatory authority for those nondairy products made in the semblance or imitation of those products defined in this act; providing for the promulgation of rules and regulations necessary to carry out the intent and purpose of this act; providing for inspection of dairies pro-

viding milk for manufacturing purposes and of manufactured dairy products plants, and the enforcement of rules and regulations pertaining to the sanitary production, manufacture, collection, transportation, handling, storage, and display of products governed by this act; providing for the establishment of standards of composition, quality, purity, and wholesomeness for dairy and nondairy products defined in this act; authorizing and establishing procedures for the denial, suspension, or revocation, for cause, of licenses issued under authority of this act; providing for those test procedures, the results of which, may be used as official and admissible evidence; providing authority for the commissioner of agriculture to make co-operative agreements with other state, federal, county, or municipal departments or agencies as may be needed to carry out the intent and purpose of this act; and providing for the penalties for violation of this act or of the rules and regulations adopted under the authority of this act; providing an effective date.

3-2489. Promulgation of minimum standards for milk or cream. The commissioner may establish and promulgate minimum standards for milk and cream used for manufacturing purposes; its production, transportation, grading, testing, use, processing, and the packaging, and storage of manufactured dairy products.

History: En. Sec. 2, Ch. 413, L. 1971.

3-2490. Licensing of persons engaged in production of milk. The commissioner or his authorized agents shall have the authority to license those persons engaged in the production of milk for manufacturing purposes and to license those persons who manufacture dairy products, or products made in their semblance or imitation when those products made in semblance or imitation of dairy products, are made in a manufactured dairy products plant.

The commissioner shall have the authority to examine and license weighers, graders, samplers and milk and cream testers in order to establish the qualifications of such persons to perform those operations, or tests for which such licenses are issued.

History: En. Sec. 3, Ch. 413, L. 1971.

3-2491. Hearings—suspension, revocation or denial of license. The commissioner shall have the authority to hold and conduct hearings rela-

tive to the suspension, revocation or denial of licenses; and, for good cause, after notice and opportunity for hearing, may suspend, revoke or deny licenses issued under authority of this act.

History: En. Sec. 4, Ch. 413, L. 1971.

3-2492. Required records and reports—examination. The commissioner shall have the authority to require dairies and dairy product manufacturers to maintain and produce for examination, or to report, such records as are necessary for carrying out his duties under this act.

History: En. Sec. 5, Ch. 413, L. 1971.

3-2493. Enforcement of laws and regulations—violation as misdemeanor. The commissioner shall supervise and enforce the laws and regulations of the state of Montana pertaining to the standards of quality and sanitation of cream, whole milk, skimmed milk, condensed milk, evaporated milk, and all food additives used in manufacturing dairy products, and of all manufactured dairy products.

Rules and regulations promulgated under authority of this act shall have the full force and effect of law, and violation of any such rules and/or regulations shall constitute a misdemeanor, punishable as provided in the general penalties section of the act, unless a specific penalty has been provided.

History: En. Sec. 6, Ch. 413, L. 1971.

3-2494. Separability provision. If any section, subdivision, phrase, or sentence of this act or of the rules and regulations promulgated under authority of this act is determined by a court of competent jurisdiction to be unconstitutional, it shall not affect the remaining portions of the act or regulations.

History: En. Sec. 7, Ch. 413, L. 1971.

3-2495. New or amended rules or regulations—mailing—hearing—judicial review. Every new or amended rule or regulation proposed by the commissioner under authority of this act shall be mailed, to each person licensed hereunder who will be affected by such rule, regulation, or amendment, at least forty-five (45) days prior to the date on which the rule, amendment, or regulation shall become effective.

Upon application in writing filed at least fifteen (15) days before the effective date of such proposal, by any person licensed hereunder, the commissioner shall vacate the effective date of such proposed rule, regulation, or amendment and hold a public hearing on and take evidence concerning the same. Within thirty (30) days after the conclusion of such hearing the commissioner shall make written findings, and conclusions, and a written decision based thereon, determining whether such new or amended rule or regulation shall be promulgated. No new or amended rule or regulation promulgated following such hearing and conclusion shall take effect until ninety (90) days after the date of such decision.

The district court of the first judicial district shall have jurisdiction to review, modify, or set aside any such decision promulgating a new or

amended rule or regulation under this act upon petition made to it at any time prior to the effective date of such rule or regulation by any person claiming to be adversely affected by such decision.

History: En. Sec. 8, Ch. 413, L. 1971.

3-2496. Investigation of complaints and violations—injunction. The commissioner is authorized and directed to provide for regular periodic inspections and investigations to disclose violations of this act or of regulations promulgated under the authority of this act; to receive and provide for the investigation of complaints; and to request the institution and prosecution of civil or criminal actions, or both. The provisions of this act and the rules and regulations issued in connection herewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and adulterated, impure, contaminated, misbranded, condemned, or mislabeled articles or products involved in a violation of this act or of said rules or regulations promulgated under the authority of this act shall be subject to seizure and disposition in accordance with an order of the court.

History: En. Sec. 9, Ch. 413, L. 1971.

3-2497. Definitions. Unless the context otherwise indicates, the following terms shall be construed, respectively to mean:

(1) The word "act" shall mean the state legislation and the regulations authorized under it pertaining to milk and cream for manufacturing purposes and to all manufactured dairy products including those dairy and nondairy products made in the semblance or imitation of manufactured dairy products when made in a manufactured dairy products plant.

(2) The word "commissioner" shall mean the commissioner of agriculture of the state of Montana or his authorized representative.

(3) The word "department" shall mean the department of agriculture of the state of Montana or its authorized representative.

(4) The word "division" shall mean the dairy and egg division of the state department of agriculture and/or its representatives.

(5) The words "milk" and "cream" concerning their use shall mean milk and cream sold, used or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as, but not limited to:

a. Butter.

b. Cheese including cottage cheese, low-fat cottage cheese, cheese curd and cream cheese which are either cultured or directly acidified and cheese dressings.

c. Ice cream and/or its mix.

d. Frozen dessert and/or its mix.

e. Sherbet of all kinds and/or their mixes.

f. Frozen ice cream bars, sandwiches, or cones and similar novelties.

g. Frozen desserts or products made in the semblance or imitation of frozen dessert.

h. Frozen confections and/or their mixes.

i. Water ices and/or their mixes.

- j. Ice milk and/or its mix.
- k. French ice cream, French custard, and/or their mixes.
- l. Frozen custard and/or its mix and frozen yogurt.
- m. Yogurt, flavored yogurt and low-fat yogurt.
- n. Sour cream—either cultured and/or directly acidified.
- o. Cream cheese—either cultured and/or directly acidified.
- p. Buttermilk—either cultured and/or from churned butter or directly acidified.
- q. Eggnog, low-fat eggnog, eggnog flavored milk, whipped cream, flavored toppings, and similar flavored products.
- r. Dry or powdered milk.
- s. Condensed milk products.

The definition of what constitutes each of the items named above, numbered "a" through "s," inclusive, shall conform to the standards of identity as set forth and as may be amended in the Code of Federal Regulations. If no such standards of identity are therein defined, then the standards adopted by the department shall prevail. The labeling of all manufactured dairy products shall be in accordance with the Montana Food, Drug and Cosmetic Act.

(6) "Manufactured dairy product" shall mean any item set forth above enumerated from (5)a through (5)s, or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality.

(7) The words "manufactured dairy products plant" or "factory" shall mean a place where milk or cream is collected, and converted into a product, or into a different state of appearance or quality and/or which manufactures those products listed under (5)a through (5)s, provided that if only products of semblance or imitation of dairy products are made; that plant shall not be considered as a manufactured dairy products plant.

(8) The word "creamery" shall mean a place where butter is made for commercial purposes.

(9) The words "cheese factory" shall mean a place where cheese including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing and low-fat counterparts of cheese either cultured or directly acidified are made for commercial purposes.

(10) The words "frozen dessert plant" shall mean any place where any products named in items "c" through "l" of section 5 above are made for commercial purposes.

(11) The words "cream station" shall mean any place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(12) The words "dairy" or "dairy farm" shall mean a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(13) The word "milk" (legal definition) shall mean the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis free by the United States Department of Agriculture or in the process of being

accredited when such milk or cream is sold for use in, intended for use in or used in a manufactured dairy product.

(14) The word "cream" shall mean the milk fat which rises to the surface when milk is allowed to stand, or which is separated from milk by centrifugal force when sold, used or intended for use in a manufactured product.

(15) The words "raw milk" or "raw milk products" shall mean milk or milk products which have not been treated by a process of pasteurization.

(16) The word "person" shall mean any individual, firm, partnership, corporation, co-operative, or any other business unit or trade device.

(17) The terms "pasteurization," "pasteurizing," and similar terms shall mean the process of heating every particle of milk or milk product to at least 145 degrees F., and holding it continuously at or above this temperature for at least thirty (30) minutes, or to at least 161 degrees F., and holding it continuously at or above this temperature for at least fifteen (15) seconds, in equipment which is properly operated and approved by the commissioner; provided, that milk products that have a higher fat content than milk or contain added sweeteners shall be heated to at least 155 degrees F., and held continuously at or above this temperature for at least thirty (30) minutes, or to at least 175 degrees F., and held continuously at or above this temperature for at least twenty-five (25) seconds; provided, however, that nothing in this definition shall be construed as barring any other pasteurization process which has been recognized by the United States Public Health Service to be equally effective and which is approved by the commissioner.

(18) The word "agent" shall mean a person who is authorized by another person to act for him in dealing with a third person.

(19) The term "grading" shall mean the examination of milk, cream, or products thereof, by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating the quality thereof.

(20) The term "testing," "test," "tested" and similar words shall refer to the examination of milk, cream, or manufactured dairy products thereof, by sight, odor, taste, or biological or chemical laboratory analysis to determine the quality, wholesomeness, or composition thereof.

(21) The term "safe temperature" shall mean 45 degrees F., or less, unless the product is frozen, in which case the temperature must be at, or below 0 degrees F.

(22) The term "and/or" used in this act or in the regulations promulgated under the authority of the act shall mean either one or the other or all.

(23) The word "producer" shall mean the person who exercises control over the production of milk or cream, delivered to a milk or cream receiving station or manufactured dairy products plant, or who receives payment for milk or cream used in manufacturing.

(24) The word "mix" shall mean and include the liquid unfrozen product from which those frozen products listed under (5)c, (5)d, (5)e, (5)g, (5)h, (5)i, (5)j, (5)k, and (5)l above are made.

(25) For purposes of reporting production, and licensing, the term “manufactured dairy product” shall mean and include but shall not be limited to:

- a. Ice cream and/or its mix.
- b. French ice cream, custard ice cream, French custard ice cream, and their low-fat counterparts and/or their mixes.
- c. Sherbets of all kinds, and/or their mixes.
- d. Animal and/or vegetable fat frozen desserts, and/or their mixes.
- e. Frozen confections and/or their mixes when made in a manufactured dairy products plant.
- f. Water ices and/or their mixes.
- g. Frozen dessert sandwiches, bars, cones, and similar novelties.
- h. Frozen dessert made of non-dairy origins, and other products made in the semblance or imitation of dairy products and/or their mixes when made in a manufactured dairy products plant.
- i. Ice milk and/or its mix.
- j. Cheese of all kinds including cottage cheese, cheese curd, cheese dressing and cream cheese either cultured or directly acidified.
- k. Sour cream when either cultured or directly acidified.
- l. Eggnog, low-fat eggnog, eggnog flavored milk and similar flavored products.
- m. Buttermilk, either cultured and/or from churned butter or directly acidified.
- n. Butter.
- o. Yogurt—low-fat yogurt, flavored yogurt, either cultured or directly acidified, or frozen.

(26) “Official test” shall mean any test procedures outlined in the sources referred to under section 11 [3-2498] of samples, methods, rules of evidence.

(27) Water ice is a frozen product, containing but not limited to the following ingredients; water, sugar, flavoring, coloring, stabilizers and other ingredients allowed by the Code of Federal Regulations as optional ingredients.

(28) The term C.I.P. shall mean the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation and when this procedure meets the 3-A accepted practices for permanently installed sanitary product—pipelines and cleaning systems.

(29) The term “filled dairy products” means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to, milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(30) The term "intrastate commerce" means any and all commerce within the state of Montana subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(31) "Code of Federal Regulations" shall mean especially but not be limited to Title 21 which contains the definitions and standards of identity for products as established by the Food and Drug Administration, United States Department of Health, Education and Welfare.

(32) The word "culture" means the harmless lactic acid fermenting bacteria which are added to milk and/or cream to make such manufactured dairy products as cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and other similar products.

(33) These terms "direct acidification—directly acidified" and similar terms refer to the process of adding a food grade acid or acids to milk and/or cream in lieu of or in addition to the adding of culture.

(34) The terms "misabeled, unwholesome, food additives, optional ingredients, impure, misbranded, contaminated, adulterated, perishable, hazardous, unfit, spoiled, damaged" and similar terms when applied to any manufactured dairy product and/or product made in semblance or in imitation of a manufactured dairy product shall have the same meanings, force and effect as those same words as they are used in the Montana Food, Drug and Cosmetic Act contained in sections 27-701 to 27-723, R.C.M. 1947, inclusive.

History: En. Sec. 10, Ch. 413, L. 1971.

3-2498. Tests and analyses—admissibility as evidence. The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the state department of health or other laboratory approved by the commissioner, to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of such products.

Any appropriate test method listed in Standard Methods for the Examination of Dairy Products, 12th edition—American Public Health Association, Inc., 1740 Broadway, New York, N.Y. 10019, Standard Methods for the Examination of Water and Waste Water, 12th edition—American Public Health Association, Inc., 1790 Broadway, New York, N.Y. 10019, or the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, 11th edition as published by the Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington 4, D.C. or any other appropriate tests approved by the department, and the results of such tests or analyses shall be admissible as prima facie evidence of the facts disclosed, in any court, hearing, or proceeding arising under or from this act, when identified by the sample numbers and verified by the department representative and analyst handling the same. Such tests shall be designated and referred to as "official tests."

History: En. Sec. 11, Ch. 413, L. 1971.

3-2499. Taking and preservation of samples. All persons purchasing or sampling milk or cream for manufacture, sale or shipment, and paying for the same on the basis of the butterfat, protein, solids, or other com-

pound components contained in the milk or cream as determined by official test, shall at the time of receiving such milk or cream take a sample thereof. All samples taken shall be plainly marked or labeled on the records of the purchaser or sampler to correspond with the name of the person from whom the purchase was made or sample obtained and such record of purchase shall also show the weight of the milk or cream, the results of such analysis, the date of sampling and the amount paid. All milk and cream samples upon which payment for butterfat, protein, solids, or other components is based shall be kept and suitably preserved by the purchaser for a minimum of fourteen (14) days following testing in the case of milk and for at least two (2) days in the case of cream. Such samples shall be subject to retest by the department. Nothing in this section shall prohibit the weighing or measuring of milk in and sampling of milk from farm bulk milk tanks, or the use of composite or single samples of milk according to rules and regulations adopted by the commissioner, or those test procedures prescribed in this act.

History: En. Sec. 12, Ch. 413, L. 1971.

3-24-100. License required for milk or cream route. It shall be unlawful for any person to engage in hauling milk or cream upon any established milk or cream route, for any dairy products manufacturing plant, milk plant, or milk or cream buying or receiving station, without first procuring a license from the state department of agriculture. The fee for such license shall be five dollars (\$5) annually.

History: En. Sec. 13, Ch. 413, L. 1971.

3-24-101. License—privilege not a right—expiration—renewal—non-transferability. All licenses issued by authority of this act or by compliance with the regulations promulgated by this act's authority shall be issued as a matter of privilege, rather than as a matter of right, and only after properly qualifying under the rules and regulations of the department. All licenses issued under the authority of the act shall be valid, unless sooner suspended or revoked for cause, from the date of issue through December 31 of the year in which issued. All licenses shall be renewed by the first January 31 following the date of license expiration upon payment of the required fee. All licenses issued under this act shall be posted in conspicuous view at the place of business. Licenses issued under this act shall not be transferable from place to place nor person to person. Penalties of five dollars (\$5) per month or fraction thereof from January 31 of each year may be imposed by the commissioner for any person's failure to apply for any license provided for under this act. Regulatory action may not be taken against any dairyman licensed under this act, until two (2) years following the promulgation and adoption of the regulations as authorized under this act.

History: En. Sec. 14, Ch. 413, L. 1971.

3-24-102. Examination and licensing of persons engaged in testing. No person shall operate any butterfat, protein, solids, or other component content test where milk or cream is bought and paid for on the basis

of such values, without first passing an appropriate examination and obtaining the license required by the department. Any person desiring to operate such tests shall apply to the state department of agriculture for permission to take the butterfat, protein, solids, or other component content test operator's examination. Such examination shall be given to the applicant by the chief of the dairy and egg division of the department, or his agent. Upon passing the examination to the satisfaction of the commissioner, the applicant shall be issued a license authorizing him to conduct such tests in Montana. A fee of ten dollars (\$10) shall be paid for each such license and for each renewal.

Milk and cream tester's licenses may be revoked, suspended or denied where testing is not conducted in accordance with official test procedures, or with department regulations, or if the tester regularly or habitually reports results below the actual values of the butterfat, protein, solids, or other compound component values, the licensee shall be subject to the penalties provided in this act. Any person who shall alter the results of any official test shall be subject to the penalties prescribed under the authority of this act.

History: En. Sec. 15, Ch. 413, L. 1971.

3-24-103. Sampling and testing by department. The department shall have the authority to sample, test, and/or retest samples of milk or cream or their products, at any dairy, at the premises of any supplier of milk or cream for manufacturing purposes, or at any manufactured dairy products plant, milk plant, or cream buying or receiving station.

History: En. Sec. 16, Ch. 413, L. 1971.

3-24-104. Grading of milk—Condemnation of unsafe milk. All milk or cream purchased for use in milk plants or to be used in any manufactured dairy product in Montana shall be graded, by licensed graders, weighers and samplers, and if such milk or cream is found to be: musty, adulterated, rancid, dirty, with marked undesirable odors or flavors, or to contain foreign objects, fragments, or substances or excessive bacteria, it shall be unlawful to sell, purchase, or use such milk or cream for any food purpose whatsoever. The milk or cream grader or commissioner shall have the authority and it shall be his duty to condemn such milk or cream, and he may add to such milk or cream a nontoxic coloring substance or rennet and return it to or leave it with the producer with an explanation of the cause for rejection.

History: En. Sec. 17, Ch. 413, L. 1971.

3-24-105. Employment of grader, weigher, and sampler—license required—revocation of operator's license. All persons receiving or purchasing milk or cream, and all persons collecting milk or cream on milk or cream routes, shall provide a licensed grader, weigher, and sampler, at each such receiving station or for each such route.

It shall be unlawful for any person to grade, weigh, or sample any milk or cream to be used for processing into grade A milk and cream or used in manufactured dairy products without first procuring a license

as a grader, weigher, and sampler from the department and passing such examination as may be required by the commissioner.

Any person who knowingly employs an unlicensed person as a grader, weigher, and sampler, or one whose license as such has been revoked or suspended, shall be subject to revocation of his own license to operate a manufactured dairy products plant, or cream or milk receiving station or the penalties prescribed in this act.

History: En. Sec. 18, Ch. 413, L. 1971.

3-24-106. Renewal, suspension or revocation of license—grounds—
hearing—appeal to district court. The commissioner is hereby empowered and authorized to deny renewal of, suspend, or revoke, any license issued under the provisions of this act or its regulations, for cause or failure to comply with the provisions of this act or with any of the rules, regulations, testing procedures, or methods promulgated under the authority of this act, or when the commissioner has reason to believe that the licensee's products may be detrimental to or jeopardize the health and welfare of the public.

Before revoking, denying renewal of or suspending a license, the commissioner shall give written notice of his intention to revoke, deny or suspend the license, his reasons therefor, and shall give the licensee a time limit, of ten (10) days from the time of receiving the notice during which time the licensee may request a hearing to show cause why his license should not be revoked, denied or suspended. Such notice shall be sent by certified mail, or personal service may be made upon the licensee by a representative of the department. Failure of the licensee to request a hearing within the time allowed by the commissioner shall be considered his desire not to contest the commissioner's reasons for suspending, denying, or revoking of said license.

However, if the licensee does request a hearing, the commissioner shall then appoint a time and place for an administrative hearing within the county where the licensee is licensed.

The date established for the hearing must be not less than ten (10) days nor more than thirty (30) days after receipt of the licensee's request for such hearing. Such request for a hearing shall serve as a bar to prosecution until a decision from the commissioner becomes final. The licensee shall at such hearing, have the opportunity to testify or to present evidence having a bearing on the denial, suspension, or revocation of his license, and, after hearing all the evidence, the commissioner shall make a determination. If a license is suspended, denied or revoked it shall not be reinstated until examination or inspection by the commissioner shows that the cause for suspension, denial or revocation has been eliminated or corrected.

It shall be unlawful for any licensee to carry on the business or operations for which he was licensed, during the term of suspension or revocation, and if he does so, the licensee shall be subject to the penalties provided in the act.

Any licensee who feels aggrieved at the decision of the commissioner in matters pertaining to suspension, denial, or revocation of a license may

appeal, within thirty (30) days after the date of determination by the commissioner, to the district court of the county in which he was licensed, if in the state, or in the case of a business firm of any nature in the state to the county of its principal place of business.

If a license is revoked, a new license must be obtained from the department but a new license may be issued only when the cause for revocation has been corrected.

History: En. Sec. 19, Ch. 413, L. 1971.

3-24-107. License required to operate manufactured dairy products plant. It shall be unlawful for any person to operate a manufactured dairy products plant, concentrated, condensed or evaporated milk and/or cream plant, milk and cream buying station, creamery, dairy producing milk for manufacturing purposes, water ice manufacturing plant, cheese plant including cottage cheese, and cream cheese, sour cream, yogurt or frozen dessert manufacturing plant without first obtaining a license from the department.

Any manufactured dairy products plant or dairy which undergoes a change of ownership shall be considered a new plant or dairy for re-licensing purposes; provided, that changes of ownership shall not be construed to include changes of stockholders.

History: En. Sec. 20, Ch. 413, L. 1971.

3-24-108. Names and addresses of producers furnished on request. The operator of any manufactured dairy products plant or grade A milk plant shall, upon request of the commissioner, furnish the department with the names and addresses of all producers from whom such plant obtains milk or cream.

History: En. Sec. 21, Ch. 413, L. 1971.

3-24-109. Use of inspections, tests, samples, etc. as evidence. All copies of inspections, written transcriptions, tests, samples of dairy products, analyses, correspondence, records of payment, trip and field reports, and photographic presentations relating to matters under this act may be used as evidence in any court of jurisdiction, at hearings or as testimony of the facts disclosed.

History: En. Sec. 22, Ch. 413, L. 1971.

3-24-110. Plans for construction, remodeling or relocating of manufacturing plant. Prior to the construction, or extensive remodeling or relocating of a dairy products manufacturing plant, detailed plans shall be submitted to the commissioner for review and approval before construction, remodeling or relocating begins. Such plans must show: size of rooms, type of building material, lighting and electrical system, ventilation, location of water supply, sewage disposal, materials to be used in floors, walls and ceilings, location and type of floor drains, plumbing, plumbing fixtures, equipment, and the makes, models, and serial numbers of any new or used equipment or machinery being added to or replacing existing equipment or machinery. Replacement equipment shall be of the NSF

or 3A standard approved types, unless otherwise approved by the department. Construction and materials must conform to regulations of the department and of building, electrical, and plumbing codes in effect in the area. Waste water, sewage and air pollutants shall be disposed by means approved by the Montana state department of health, and evidence shall be submitted that approval has been obtained from the state department of health.

History: En. Sec. 23, Ch. 413, L. 1971.

3-24-111. Monthly report of plant operator—penalty. It shall be the duty of every person operating a manufactured dairy products plant in this state to render to the department once a month and not later than the tenth day of each month, a full report of the amounts of butter, cheese, frozen dessert, ice cream, low-fat ice cream, sherbet, water ices, ice milk, freezer-made milk shakes, or other dairy products handled or manufactured during the preceding month as requested by the commissioner. Any person failing to render the report required by this section or failing to make said report by the date due shall be guilty of a misdemeanor and subject to the penalties provided in the act.

History: En. Sec. 24, Ch. 413, L. 1971.

3-24-112. Licenses and schedule of fees required under the Manufactured Dairy Products Act.

1. Milk and cream tester	\$10.00
2. Creamery	25.00
3. Cultured and/or directly acidified dairy products including one or all of the following: cheese, cottage cheese, cream cheese, cheese curd, sour cream, buttermilk, yogurt and similar dairy products and their low-fat counterparts	50.00
4. Cream station, except stations owned and operated by a manufactured dairy products plant	5.00
5. Milk and cream haulers	5.00
6. Graders, weighers, and samplers	5.00
7. Wholesale butter and cheese, provided that such license shall not be required when a person sells only butter and/or cheese of his own manufacture	20.00
8. Frozen dessert manufacturing	50.00

For licensing purposes the term "frozen dessert" shall mean and include one or all of the following but not limited to the following:

- a. Ice cream and/or its mix.
- b. French ice cream, French custard ice cream, and their low-fat counterparts and/or their mixes.
- c. Sherbets of all kinds, and/or their mixes.
- d. Animal and/or vegetable fat frozen desserts, and/or their mixes.
- e. Frozen confections and/or their mixes.
- f. Water ices and/or their mixes.

g. Frozen dessert sandwiches, bars, cones and similar novelties.

h. Frozen desserts made of dairy and/or nondairy origins, and similar products made in the semblance or imitation of frozen desserts and/or their mixes provided, that a frozen dessert manufacturing license shall not be required of a cafe, restaurant or drive-in type operation whose main business is food purveying as licensed by the state department of health and provided further that no license shall be required to manufacture nondairy frozen desserts when only such desserts are manufactured.

i. Ice milk and/or its mix.

9. Dairies

5.00

provided, that any person licensed to produce and sell grade A milk and/or cream shall be exempt from this licensing.

Creameries, cheese factories, cream stations, frozen dessert factories and wholesale butter and cheese dealers shall be licensed as individual operations but collectively under a single manufactured dairy products license; provided, however, that when a person who wholesales butter and cheese operates, separately as a business, distinct, by himself with or without other persons, as an independent wholesale dealer, then such license to wholesale butter and/or cheese shall be issued separately from the cheese factory or creamery license to that person who operates the wholesale butter and cheese business.

Milk and cream testers, graders, weighers and samplers, haulers, and persons operating dairies shall be licensed separately and individually whether employed by a manufactured dairy products plant or by themselves.

All license fees shall be deposited to the credit of the general fund.

History: En. Sec. 25, Ch. 413, L. 1971.

3-24-113. Removal or destruction of products in case of potential health hazards. When epidemiological evidence, or the likelihood exists that a dairy or manufactured dairy products plant is producing, manufacturing, storing, handling, or offering for sale, any milk or manufactured dairy product which is adulterated, or which may be detrimental to the health or safety of the consumer, the commissioner may request the state department of health to remove such product from the market and/or to be held, disposed of, destroyed, or treated in such a manner so as to no longer constitute a potential health hazard.

It shall be unlawful for any person, in any manner, to violate any order requiring removal from the market, holding, disposing of, destroying, or treating such products. Violation shall be punishable as a misdemeanor, and each such violation shall be subject to a fine of not less than twenty-five dollars (\$25) nor more than two hundred fifty dollars (\$250) or by imprisonment in the county jail for not more than thirty (30) days, or to both fine and imprisonment.

History: En. Sec. 26, Ch. 413, L. 1971.

3-24-114. Commissioner's right of entry into dairy or plants for inspection—penalty. The commissioner or authorized agent shall have the right of entry during normal business hours, including Sundays and holidays, into any dairy supplying milk or cream for manufacturing purposes, manufactured dairy products plant, milk plant or cream receiving station, transportation facility, or any premises where dairy products, dairy manufactured products, or their substitutes or imitations are produced, manufactured, sold or offered for sale, stored, or while in transit; for the purpose of inspection such dairy or plant, its facilities, products, or to obtain samples for testing or analysis. It shall be unlawful for any person to interfere with or obstruct the commissioner or his authorized agent in the performance of his duty to enter, inspect, and/or obtain samples.

Violation of the provisions of this section shall constitute a misdemeanor and shall subject the offender to a fine of not less than fifty dollars (\$50) and not more than five hundred dollars (\$500) or to imprisonment in the county jail for not less than one (1) nor more than thirty (30) days or to both such fine and imprisonment.

History: En. Sec. 27, Ch. 413, L. 1971.

3-24-115. Co-operative agreements with other agencies. The commissioner is specifically authorized to enter into co-operative working agreements with state, county, city, and town departments and their political or departmental subdivisions to facilitate carrying out the functions or duties of his office.

This section of the act is expressly intended to include authority for the commissioner to establish co-operative working agreements with any health departments, sanitarians, or health officers, when special investigations, sampling or analyses are deemed advisable.

History: En. Sec. 28, Ch. 413, L. 1971.

3-24-116. Buyers and plants to make records available to commissioner. All persons who, including co-operatives which, buy or sell milk or cream on the basis of butterfat, protein, solids, or other component content of milk or cream, shall make available to the commissioner upon his request, all records showing the amounts of milk or cream sold or purchased, the price per pound, the amount paid, the sampling period for which the amount was paid, and the name and address of the person to whom payment was made or from whom payment was received.

Each manufactured dairy product plant shall, upon request by the commissioner, make available to him all production records of all dairy manufactured products covered by this act and of all manufactured products made in semblance or imitation thereof.

History: En. Sec. 29, Ch. 413, L. 1971.

3-24-117. Labeling of cheese containers—products to be kept at safe temperature. It shall be unlawful, and punishable as a misdemeanor, for any person to offer for sale, expose for sale, or sell any cheese in any container or wrapper unless such container or wrapper bears a legible label or inscription indicating the net weight, type or style of

cheese, and the manufacturer's or distributor's name and address or plant number.

All manufactured dairy products which are handled, displayed, transported, exposed for sale, offered for sale, or sold in Montana, shall be considered perishable and potentially hazardous, and shall be kept at safe temperature or below; provided, however that nothing in this requirement shall be construed as prohibiting higher temperatures which are necessary for curing, ripening or aging of certain cheeses and cultured products, and provided, further, that this section of the act does not apply to manufactured dairy products packaged in hermetically sealed containers or sterile manufactured dairy products which do not require refrigeration for their safekeeping.

History: En. Sec. 30, Ch. 413, L. 1971.

3-24-118. Sanitary regulation of imported products. All manufactured dairy products, or imitations or products made in semblance thereof, covered by this act, shipped into Montana for sale display or use must be produced under the same or equivalent sanitary regulations and requirements as govern the production of such products in Montana.

Unless the sanitary conditions of manufacture and standards of identity conform to the same or equivalent standards required by the laws or regulations of this state, such products shall not be sold, given away, displayed, transported into, or used in Montana.

History: En. Sec. 31, Ch. 413, L. 1971.

3-24-119. Manufacturer's, wholesaler's or retailer's names to appear on package—use of codes and numbers permitted. All manufactured dairy products sold, offered, displayed or exposed for sale, at wholesale or retail in Montana, wherever manufactured, must be packaged in a protective wrapper or package and must have the manufacturer's and wholesaler's or retailer's names clearly printed in a conspicuous place on the package, or wrapper, in which it is sold. In case a manufactured dairy product is packaged in a plant other than that of the plant which name appears on the package or wrapper, the package or wrapper shall also show the name of the plant at which such product was packaged or wrapped. Provided, however, that nothing in this section of the act shall be construed as preventing the use of codes or numbers which designate the packaged or wrapping plant, when such codes or numbers are registered in the office of the dairy and egg division of the department.

History: En. Sec. 32, Ch. 413, L. 1971.

3-24-120. Sale or use of impure, colored, adulterated or unwholesome milk unlawful. It shall be unlawful for any person to sell, manufacture or exchange, display or offer or expose for sale or exchange, as milk or cream, any impure, colored, adulterated, or unwholesome milk or cream or any substance in the semblance or imitation of milk or cream, nor shall any such impure, colored, adulterated, or unwholesome milk or cream be used in the manufacture of any article of food for human beings.

History: En. Sec. 33, Ch. 413, L. 1971.

3-24-121. Manufacture, sale, or importation of products containing extraneous fats. It shall be unlawful for any person to manufacture, mix, compound with, or add to milk, cream, or any manufactured dairy products, or to transport into Montana any manufactured dairy product containing foreign animal fats or foreign animal or vegetable oils or products containing nonapproved ingredients with the intent to sell the same as milk, cream or manufactured dairy products except as allowed under the law and/or regulations of Montana, nor shall any person possess, solicit orders for display, or sell any such article, substance, or compound as or for milk, cream or manufactured dairy products.

History: En. Sec. 34, Ch. 413, L. 1971.

3-24-122. Filled dairy products unlawful—exceptions. Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for and confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer or ordinary laboratory procedures. The manufacture, sale, exchange, purveying, transportation, possession, or offering for sale or exchange or purveyance of filled dairy products lends itself to substitution, confusion, deception, and fraud, and one which if permitted to exist tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state. It is hereby declared to be the purpose of this act to correct, prevent and eliminate the condition above referred to; to protect the public from confusion, fraud and deception; to prohibit practices inimical to the general welfare; and to promote the orderly and fair marketing of essential foods.

(1) Therefore, it shall be unlawful in intrastate commerce for any person to manufacture, sell, exchange, display, purvey, transport or possess any filled dairy product or to offer or expose for sale or exchange or to be purveyed any such product.

(2) It shall be unlawful for any person owning or operating a bakery, confectionery shop, factory or other place where food products are prepared or manufactured for sale, exchange or purveyance to the public in intrastate commerce to utilize any filled dairy product as an ingredient in any food product so manufactured or prepared.

(3) It shall be unlawful in intrastate commerce for any person knowingly to sell, exchange, purvey, transport or possess any food product in which any filled dairy product is an ingredient, provided, however, that the term "filled dairy product" shall not be construed to mean or include:

(a) Oleomargarine;

(b) Any distinctive proprietary food compound not readily mistaken for a dairy product where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

(c) Any frozen dessert containing animal fat (other than butterfat) or vegetable fat when the container is properly labeled;

(d) Any dairy product flavored with chocolate or cocoa where the fats or oils other than milk fat contained in such product do not exceed

the amount of cacao fat naturally present in the chocolate or cocoa used;
or

(e) Any dairy product in which the vitamin content has been increased and food oil utilized as a carrier of such vitamins provided the quantity of such food oil does not exceed one one-hundredths (1/100) of one per cent (1%) of the weight of the finished dairy product.

History: En. Sec. 35, Ch. 413, L. 1971.

3-24-123. Manufactured products to conform to standards of identity.

It shall be unlawful for any person to manufacture, display, transport, sell or offer for sale in Montana as a manufactured dairy product any substance or product which does not conform to the standards of identity for such product as defined in the Code of Federal Regulations, or to the standard of identity established by the department.

History: En. Sec. 36, Ch. 413, L. 1971.

3-24-124. Adulterating milk or cream unlawful. It shall be unlawful for any person to adulterate milk or cream produced or sold for manufacturing purposes, or for any manufactured dairy product to contain an adulterant. For purposes of this act, the presence of any antimicrobial substance, pesticide residuals, unapproved coloring, food additives, or foreign substances added directly to or assimilated into such products which are not explicitly allowed in the Code of Federal Regulations except for the addition of adulterants for rejection purposes, shall be deemed adulterated. Violations of this section shall be misdemeanors, and shall be punishable by fine or imprisonment, or both, as provided in the act.

History: En. Sec. 37, Ch. 413, L. 1971.

3-24-125. Advertising of oleomargarine. It shall be unlawful for any person in connection with the sale, advertisements, or offering for sale of oleomargarine or any other substance intended to be used as a substitute for butter, and which substance or oleomargarine is made wholly or in part from animal or vegetable fats, or oils, other than the fat of pure milk or cream, to use the words, "dairy," "creamery," "butter," "cream," or any picture of a cow or cows or the names of any breeds of cattle, sound or graphic, sign, symbol, or device which could tend to mislead the consumer or user as to the contents of oleomargarine. Violations of the provisions of this section shall constitute a misdemeanor, and shall subject the offender, upon conviction, to a fine of not less than fifty dollars (\$50) and not more than five hundred dollars (\$500) or to imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or to both such fine and imprisonment.

History: En. Sec. 38, Ch. 413, L. 1971.

3-24-126. Pasteurization required. All milk and cream used in the manufacture of any dairy product, or products made in semblance of imitations of dairy products, sold, offered for sale, purveyed, stored, displayed or transported in Montana, shall be pasteurized; provided, however, that cheese held, stored, or aged, for at least sixty (60) days at not less

than 35 degrees F., shall not be required to be made from pasteurized milk or cream, but shall be required to be labeled "made from raw" or "unpasteurized milk" or "unpasteurized cream," as the case may be. Other cultured raw or unpasteurized dairy products which can be made safe by aging shall also be required to be similarly aged and labeled as required above.

History: En. Sec. 39, Ch. 413, L. 1971.

3-24-127. Pasteurization apparatus and records. The commissioner shall have the authority to prescribe or establish regulations which he deems necessary to assure proper control and use of all equipment or apparatus used in the process of pasteurization, and to require the operation of such devices and apparatus as are needed to accurately record, and indicate, temperatures to which and the length of time for which, the pasteurized product has been heated including those periods and temperatures when such equipment is cleaned and sanitized by C.I.P. method. Any person using pasteurizing equipment within the state of Montana shall properly record and have available to the commissioner for the preceding two months, all records pertaining to the pasteurization of any product, and said records shall, at all times, be open to the inspection of the department, the state department of health, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

All pasteurizing equipment which records temperatures or controls the time of holding shall be timed, set and sealed by the commissioner. Such seals shall not be removed or broken without first notifying the dairy and egg division.

History: En. Sec. 40, Ch. 413, L. 1971.

3-24-128. Pasteurization labeling. It shall be unlawful for any person to sell, offer for sale or exchange, or to have in possession for such purpose, any milk, cream, or manufactured dairy product, in any container or package, marked, labeled, or in any way designating the contents thereof as "pasteurized," unless the same has been treated by an approved process of pasteurization, as is required by the commissioner.

History: En. Sec. 41, Ch. 413, L. 1971.

3-24-129. Sanitary board license requirements applicable. The licenses required under this act apply only to those licenses issued by the Montana state department of agriculture. Nothing in this act shall be deemed to repeal or abrogate the authority of or the issuance of licenses by the state livestock sanitary board or the state department of health.

Provided, however, that requirements for a license from the state department of agriculture shall not apply where such license duplicates one issued by the state livestock sanitary board.

History: En. Sec. 42, Ch. 413, L. 1971.

3-24-130. Antimonopoly statutes applicable. The provisions of state statute sections 94-1107 to 94-1114 inclusive, relating to monopoly in the

purchase or sale of products in general use, are hereby expressly made applicable to all persons engaged in the business of buying milk, cream, or butterfat for the purpose of manufacture, and those who shall violate any of the provisions of said sections. All milk, cream, butterfat, manufactured dairy products, or products made in the semblance or imitation of manufactured dairy products, are hereby declared to be commodities and products in general use within the meaning of the sections aforesaid.

History: En. Sec. 43, Ch. 413, L. 1971.

3-24-131. Milk and manufactured dairy products to conform to standards. All milk and cream used in manufactured dairy products, and the manufactured dairy products, shall conform to the standards of purity, quality, and wholesomeness as provided in this act or in the regulations promulgated under the authority of this act.

History: En. Sec. 44, Ch. 413, L. 1971.

3-24-132. Posting prices of butterfat required. All persons who buy milk or cream for manufacturing purposes shall post the current prices for butterfat, or other component content, of milk or cream, in a conspicuous place in the factory or place of business. Such price schedule may be based upon butterfat, protein, solids, or other components of milk or cream and shall indicate upon which of such basis payment is made.

History: En. Sec. 45, Ch. 413, L. 1971.

3-24-133. License required for butter or cheese wholesaler. It shall be unlawful for any person to sell, exchange, or offer for sale or exchange, at wholesale, or to have in possession with the intent to sell, exchange, or offer for sale at wholesale, any butter or cheese without first procuring a license from the department for that purpose. Where such person conducts such sale or exchange at more than one place of business, a separate license shall be required for each such place of business and a separate fee shall be paid for each license.

Provided, however, that any manufactured dairy products plant which is licensed by the department to manufacture butter or cheese shall not be required to obtain this license.

All wholesalers or jobbers handling butter or cheese shall conduct their business under the same regulations of cleanliness, sanitation, and refrigeration, as are prescribed for manufactured dairy products plants.

History: En. Sec. 46, Ch. 413, L. 1971.

3-24-134. Requirements for containers and equipment. All containers and equipment used in the manufacture, storage, holding display and transportation of any manufactured dairy product shall be nontoxic, easily cleanable and free from dents, cracks, crevices, rust and any other condition which would prevent cleaning and sanitizing.

History: En. Sec. 47, Ch. 413, L. 1971.

3-24-135. Labeling of animal or vegetable fat contents on frozen desserts. Any frozen dessert made in the semblance of or in imitation of ice

cream in this act, which contains any amount of animal fat (other than milk fat), or vegetable fat or oil, (other than any such fat or oil which is naturally present in any flavoring ingredient), shall be labeled as an animal fat product, or vegetable fat product, or a combination of both, as the case may be. Such animal fat or vegetable fat products shall be manufactured from a pasteurized mix, which has been processed in a licensed manufacturing dairy product plant. All persons manufacturing, offering for sale or exchange, or selling such animal fat or vegetable fat frozen desserts shall be subject to the sanitary, reporting, and licensing regulations of this act and of the regulations promulgated under the authority of this act.

No representation shall be made by statement, word, grade designation, design, symbol, device, or in any other manner, on any container, package, or wrapper, or on any advertising media that such animal fat or vegetable fat product, or combination thereof, is ice cream, sherbet or any of their low-fat counterparts or derivatives, or any other products which are prohibited from containing animal or vegetable fats.

The container, package, or wrapper, containing such animal fat or vegetable fat frozen dessert, shall be clearly and plainly marked, labeled, or printed, on the outside, in boldfaced letters, with the words, "Animal Fat Product," "Vegetable Fat Product," "Animal-Vegetable Fat Products," or "Vegetable-Animal Fat Product" as the case may be, and shall bear thereon the common or usual name of each of the ingredients therein, including the fats or oils; except that spices, flavorings, or colorings may be designated as such without naming each.

History: En. Sec. 48, Ch. 413, L. 1971.

3-24-136. Labeling on manufactured dairy products to conform to requirements. Labeling on all manufactured dairy products shall conform to all requirements of the Food, Drug and Cosmetic Act, and to such other requirements as may be adopted by the department or the state department of health.

History: En. Sec. 49, Ch. 413, L. 1971.

3-24-137. Penalties for violations. Any person who shall violate any of the provisions of this act, or who shall fail to comply with the regulations promulgated under the authority of this act or promulgated by the commissioner, or who shall fail or neglect to obey any lawful order of the commissioner or department, made pursuant to this act, shall upon conviction, be guilty of a misdemeanor.

Unless a specific penalty is otherwise provided in the act or regulations for such offense, the offender shall be subject to a fine of not less than twenty-five dollars (\$25) and not more than five hundred dollars (\$500) or by imprisonment in the county jail for not to exceed six (6) months, or to both such fine and imprisonment.

History: En. Sec. 50, Ch. 413, L. 1971.

Repealing Clause

Section 51 of Ch. 413, Laws 1971 read
"Sections 3-2401, 3-2402, 3-2403, 3-2405,

3-2406, 3-2407, 3-2408, 3-2409, 3-2410, 3-2411, 3-2412, 3-2413, 3-2414, 3-2415, 3-2416, 3-2417, 3-2418, 3-2419, 3-2420, 3-2421, 3-2422, 3-2423, 3-2424, 3-2425, 3-2426, 3-2427, 3-2428, 3-2429, 3-2430, 3-2431, 3-2434, 3-2436, 3-2437,

3-2438, 3-2439, 3-2440, 3-2441, 3-2442, 3-2443, 3-2444, 3-2447, 3-2448, 3-2449, 3-2450, 3-2451, 3-2452, 3-2453, 3-2454, 3-2455, 3-2456, 3-2457, 3-2458, 3-2459, 3-2460, 3-2461, 3-2462, 3-2463, 3-2464, 3-2465, 3-2466, 3-2467, 3-2468, 3-2469, 3-2470, 3-2471, 3-2472, 3-2476, 3-2477, 3-2478, 3-2479, 3-2480, 3-2481, 3-2482, 3-2483, 3-2484, 3-2485, 3-2486, 3-2487 are repealed."

Effective Date

Section 52 of Ch. 413, Laws 1971 read
"This act is effective on January 1, 1972."

CHAPTER 25—MONTANA QUALITY LABEL—USE ON INSPECTED
AGRICULTURAL AND FOOD PRODUCTS

3-2501. Montana quality label.**Cross-References**

Commissioner's functions transferred to
department of livestock, sec. 82A-1302.

CHAPTER 29—WHEAT RESEARCH AND MARKETING

Section

3-2911. Annual assessment on wheat grown.

3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment.

3-2914. Commissioner to report.

3-2905. Governor to appoint administrative committee—duties, etc.**Cross-References**

Committee continued in department of
agriculture, sec. 82A-304.

3-2911. Annual assessment on wheat grown. There is hereby levied an annual assessment of two and one-half ($2\frac{1}{2}$) mills per bushel upon all wheat grown in the state of Montana, and sold through commercial channels beginning August 20, 1967. The assessment is hereby levied and imposed on each grower of wheat in the state of Montana:

(1) and (2) * * * [Same as parent volume.]

The assessment levied under the provisions of this act, shall be deducted and collected as provided by this act, whether such wheat is stored in this or any other state. The assessment shall attach to each transaction, but no grower shall be subject to assessment more than once irrespective of the number of times it shall be the subject of a sale, pledge, mortgage or other transaction, the assessment being imposed and attaching on the initial sale, pledge, mortgage or other transaction in which the wheat grower parts with title to the wheat, or creates some interest therein in a pledgee, mortgagee or other person.

History: En. Sec. 11, Ch. 314, L. 1967;
amd. Sec. 1, Ch. 201, L. 1971.

Amendments

The 1971 amendment deleted "unless a

grower or his agent at the time of transaction shall request in writing that no assessment be made" from the end of the preliminary paragraph.

3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment. (1) The purchaser of the wheat at the time of settlement therefor on sale, or the pledgee or mortgagee or

other lender at the time of its loan or advance, shall make and deliver separate invoices for each purchase to the grower. Such invoices shall be on forms approved by the administrative committee showing.

(a) to (d) * * * [Same as parent volume.]

(2) * * * [Same as parent volume.]

(3) The statement referred to in subsection (1) (2) of this section, shall be legibly written and shall be entirely free of any corrections or erasures on the face thereof. Any person who shall alter any part of any statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as is provided herein.

(4) At any time after thirty (30) days from the deduction of the assessment and before the expiration of ninety (90) days following such deduction by the first purchaser or the first lender, the grower may, upon the submission of a written, verified request therefor to the administrative committee through the commissioner of agriculture obtain a refund in the amount of the assessment deducted by said first purchaser or said first lender. The request shall be accompanied by the original invoices received by the grower at the time of settlement. The wheat research and marketing division shall keep complete records of all refunds made under the provisions of this act. Records of refunds may be destroyed two (2) years after the refund is made. All original invoices shall be returned to the grower with the refund payment.

History: En. Sec. 13, Ch. 314, L. 1967;
amd. Sec. 2, Ch. 201, L. 1971.

Amendments

The 1971 amendment added subsection (4) and made minor changes in style.

3-2914. Commissioner to report. The commissioner of agriculture and the chief of the wheat research and marketing division shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 14, Ch. 314, L. 1967;
amd. Sec. 5, Ch. 93, L. 1969.

Amendments

The 1969 amendment rewrote this section which formerly required annual reports.

TITLE 4—ALCOHOLIC BEVERAGES

Chapter

1. State Liquor Control Act of Montana—licensing—sale of alcoholic beverages by state liquor stores, 4-108, 4-114, 4-116, 4-121, 4-153, 4-161.
2. State Liquor Control Act of Montana (continued)—interdiction and other enforcement provisions—finance—miscellaneous, 4-227, 4-235, 4-240.
3. Montana Beer Act—licensing sale of beer under supervision of state liquor control board, 4-317, 4-324, 4-330, 4-337, 4-347, 4-347.1.
4. Montana Retail Liquor License Act—sales by licensees of board, 4-403, 4-413, 4-439.
5. Identification cards, 4-502, 4-504, 4-506.

CHAPTER 1—STATE LIQUOR CONTROL ACT OF MONTANA—LICENSING— SALE OF ALCOHOLIC BEVERAGES BY STATE LIQUOR STORES

Section

- 4-108. Salaries of state liquor administrator and other employees—duties of assistant administrator.
- 4-114. Establishment of state liquor stores—hours—kinds and prices of liquor.
- 4-116. Provisions concerning sale of liquor and beer by vendors.
- 4-121. When sales of liquor forbidden.
- 4-153. Board members not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration.
- 4-161. Age limit for sale of liquor.

4-101. (2815.60) Citation of State Liquor Control Act, etc.

Compiler's Notes

Chapter 238, Laws 1969 provided for the issuance and sale of bonds by the state board of examiners for the purpose of

acquiring a site for and erecting a warehouse and administration building for the Montana Liquor Control Board.

4-104. (2815.63) Montana liquor control board—creation—etc.

Cross-References

Board continued in department of revenue, sec. 82A-1805.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

4-108. (2815.63) Salaries of state liquor administrator and other employees—duties of assistant administrator. The board shall fix the salaries of its employees at such sums as it deems advisable, to wit. The salary of the state liquor administrator in a sum not exceeding twelve thousand five hundred dollars (\$12,500) per year; the salary of the assistant state liquor administrator in a sum not exceeding ten thousand five hundred dollars (\$10,500) per annum; the salary of the supervisor of the accounting department not exceeding nine thousand four hundred fifty dollars (\$9,450) per annum; the salaries of the supervisors of the data processing department and the license department in a sum not exceeding eight thousand two hundred fifty dollars (\$8,250) per annum each, the salary of the supervisor of the warehouse department in a sum not exceeding seven thousand seven hundred dollars (\$7,700) per annum; the salaries of the purchasing agent, the traffic manager, the assistant supervisor of the data processing department, the assistant supervisor of

the accounting department, store auditors and field inspectors in a sum not exceeding seven thousand two hundred sixty dollars (\$7,260) per annum each, the salary of a vendor of a "Class A" store in a sum not exceeding seven thousand two hundred sixty dollars (\$7,260) per annum; the salary of one (1) assistant vendor of a "Class A" store in a sum not exceeding six thousand six hundred dollars (\$6,600) per annum; the salary of any other employee of a "Class A" store in a sum not exceeding six thousand two hundred dollars (\$6,200) per annum; the salary of a vendor of a "Class B" store in a sum not exceeding six thousand three hundred fifty dollars (\$6,350) per annum; the salary of an assistant vendor and any other employee of a "Class B" store in a sum not exceeding five thousand two hundred fifteen dollars (\$5,215) per annum; the salary or compensation of a vendor of a "Class C" store in a sum not exceeding five thousand six hundred thirty five dollars (\$5,635) per annum; the salary of an assistant vendor and any other employee of a "Class C" store in a sum not exceeding four thousand six hundred dollars (\$4,600) per annum; the salary of any other employee of the board in the sum not exceeding seven thousand two hundred sixty dollars (\$7,260) per year. The volume of the individual store sales shall be taken into consideration in fixing the salary of store vendors, assistant vendors and employees. The assistant state liquor administrator shall exercise such powers and perform such duties as the board may prescribe.

History: En. Sec. 4, Ch. 105, L. 1933; amd. Sec. 1, Ch. 30, L. 1937; amd. Sec. 1, Ch. 243, L. 1947; amd. Sec. 1, Ch. 140, L. 1949; amd. Sec. 1, Ch. 183, L. 1951; amd. Sec. 2, Ch. 235, L. 1957; amd. Sec. 2, Ch. 151, L. 1963; amd. Sec. 1, Ch. 265, L. 1967; amd. Sec. 1, Ch. 376, L. 1971.

Amendments

The 1971 amendment increased salary limits from \$11,500 to \$12,500, from \$10,000 to \$10,500, from \$9,000 to \$9,450, from \$7,500 to \$8,250, from \$7,000 to \$7,700, from \$6,600 to \$7,260, from \$5,750 to \$6,600, from \$5,400 to \$6,200, from \$5,500 to \$6,350, from \$4,535 to \$5,215, from

\$4,900 to \$5,635, from \$4,000 to \$4,600 and from \$6,600 to \$7,260; and made minor changes in style.

Warehouse Employees

Salary ceiling imposed by this section applies to warehouse employees of Montana liquor control board and was not repealed or amended by the discretionary salary increase provision of House Bill No. 4, Extraordinary Session of 1969, so as to permit salary increases beyond the ceiling limitation. Teamsters, Chauffeurs, Warehousemen and Helpers, Local 45 v. Montana Liquor Control Board, — M —, 471 P 2d 541.

4-114. (2815.69) Establishment of state liquor stores—hours—kinds and prices of liquor. The board shall establish and maintain at the county seats and such other places as the board deems advisable, one or more stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this act and the regulations made thereunder; the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to be used in figuring each store's classification shall be the volume of business done by the store to be classified during the immediate past fiscal year; stores shall be classified as follows: stores having done a business of four hundred and fifty thousand dollars (\$450,000) or over during the immediate past fiscal year shall be "Class A" stores; stores having done a business of one hundred and forty thousand dollars (\$140,000) and up to four hundred and fifty thousand dollars (\$450,000) during the immediate

past fiscal year shall be "Class B" stores; and all stores having done a business of less than one hundred and forty thousand dollars (\$140,000) during the immediate past fiscal year shall be "Class C" stores; in opening new stores the board shall estimate the volume of business which said store will do the first year and classify said store according to the estimate of business; the board shall employ the necessary help to operate said stores and shall designate the duties to be performed by the employees; the board may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the board shall deem advisable, provided, however, that such stores shall be closed for the transaction of business between the close of normal business Saturday p.m. through the opening of normal business Tuesday a.m. as set by board regulation and including legal holidays, and election days.

History: En. Sec. 10, Ch. 105, L. 1933; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1, Ch. 6, L. 1971.

Amendments

The 1971 amendment substituted "be-

tween the close of normal business Saturday p.m. through the opening of normal business Tuesday a.m. as set by board regulation and including" in the final sentence for "on Sundays."

4-116. (2815.71) Provisions concerning sale of liquor and beer by vendors. A vendor may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this act and the regulations made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price.

History: En. Sec. 12, Ch. 105, L. 1933; amd. Sec. 4, Ch. 154, L. 1965; amd. Sec. 1, Ch. 162, L. 1969.

Amendments

The 1969 amendment deleted the subsection (1) designation at the beginning of the section and added the proviso; deleted subsection (2) which prohibited

delivery before vendor had received a written order and had been paid the purchase price in cash; and deleted subsection (3) which provided that a vendor might sell and deliver beer provided that no delivery should take place until the purchaser had paid in the manner prescribed by regulations.

4-121. (2815.75) When sales of liquor forbidden.

History: En. Sec. 16, Ch. 105, L. 1933; amd. Sec. 5, Ch. 30, L. 1937; amd. Sec. 2, Ch. 62, L. 1971.

Compiler's Notes

Laws 1971, Ch. 62 purported to amend this section but made no change. For section, see parent volume.

4-153. (2815.107) Board members not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration. (1) to (3) * * * [Same as parent volume.]

(4) The prohibition contained in subsection (3) of this section does not prohibit the board from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor, or any other person, firm, or corporation proposing to sell any spirituous liquors to the Montana liquor control board shall submit, without cost to the board prior to the original purchase, an analysis of each brand and may submit a representative

sample not exceeding twenty-five (25) fluid ounces of such merchandise to the board.

(b) It shall be the duty of the board, when a brand of liquor has been accepted for testing by the board, to forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The board shall maintain written records of all samples received; such records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the board's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other spirituous beverage shall be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana liquor control board, for any purpose whatsoever other than by sale at the prevailing state retail prices, or for destroying damaged or defective merchandise. The board shall maintain a written record including the type, brand, and container size; number of bottles or other units; signatures of witnesses; and method of destruction or other disposition of damaged or defective warehouse or state store merchandise.

History: En. Sec. 48, Ch. 105, L. 1933; amd. Sec. 1, Ch. 144, L. 1965; amd. Sec. 1, Ch. 72, L. 1971.

Amendments

The 1971 amendment substituted "chemical testing, subject to the following limitations" at the end of the preliminary paragraph of subsection (4) for "quality determination"; inserted paragraphs (a) and (b) in subsection (4); designated the former second sentence of subsection (4)

as paragraph (4)(c); inserted "date received, the laboratory or chemist to whom forwarded, the board's action on the brand" in paragraph (4)(c); and added subsection (5).

Effective Date

Section 2 of Ch. 72, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

4-161. (2815.115) Age limit for sale of liquor. Except in the case of liquor given to a person under the age of nineteen (19) years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply liquor to any person under the age of nineteen (19) years, or permit any person under that age to consume liquor.

History: En. Sec. 56, Ch. 105, L. 1933; amd. Sec. 1, Ch. 240, L. 1971.

Amendments

The 1971 amendment reduced the age limit from 21 to 19 years; and made a minor change in style.

CHAPTER 2—STATE LIQUOR CONTROL ACT OF MONTANA (continued)— INTERDICTION AND OTHER ENFORCEMENT PROVISIONS— FINANCE—MISCELLANEOUS

Section

4-227. Reports to state examiner—biennial reports—contents.

4-235. Indebtedness may be created—limitation.

4-240. License tax on liquor—amount—distribution of proceeds.

4-227. (2815.152) Reports to state examiner—biennial reports—contents. (1) Effective July 1, 1949 the board shall from time to time

make reports to the state examiner covering such matters in connection with administration or enforcement of this act as he may require, and shall also report as provided in section 2 [82-4002] of this act.

(2) The books and records of the board shall be at all times subject to examination and audit by the state examiner or his duly authorized agents or employees.

History: En. Sec. 92, Ch. 105, L. 1933; amd. Sec. 1, Ch. 86, L. 1949; amd. Sec. 6, Ch. 93, L. 1969.

Amendments

The 1969 amendment, in subsection (1), substituted the provision for section 82-4002 biennial reports for the former pro-

vision for annual reports, deleted subdivisions (a) through (c), which provided for contents of the reports; deleted subsection (2), which provided for laying the reports before the legislature and redesignated former subsection (3) as subsection (2).

4-235. (2815.161) Indebtedness may be created—limitation. The board is hereby authorized to incur indebtedness in the administration of this act for necessary expenses and the acquisition of necessary property and merchandise, provided, however, that the total amount of outstanding indebtedness, exclusive of indebtedness incurred for merchandise held for resale, shall not at any time exceed the sum of twenty-five thousand dollars (\$25,000) and provided further that any indebtedness so incurred by the board shall be paid solely out of the moneys arising in the administration of this act.

History: En. Sec. 101, Ch. 105, L. 1933; amd. Sec. 1, Ch. 77, L. 1971.

Amendments

The 1971 amendment inserted "exclusive of indebtedness incurred for merchandise held for resale" in the first proviso.

Effective Date

Section 2 of Ch. 77, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

4-240. License tax on liquor—amount—distribution of proceeds. The Montana liquor control board is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of four per centum (4%) of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the Montana liquor control board. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by said board. Said four per centum (4%) license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The Montana liquor control board shall retain the amount of such four per centum (4%) license tax so received in a separate account and shall apportion said license tax to the treasurers of the counties according to the amount of liquor sold by said board to the purchasers in each county. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the board shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section 4-241, R. C. M. 1947. The Montana liquor control board shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth ($\frac{1}{4}$) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths ($\frac{3}{4}$) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county.

History: En. Sec. 1, Ch. 217, L. 1957;
amd. Sec. 1, Ch. 153, L. 1969.

Amendments

The 1969 amendment inserted the sixth sentence of the first paragraph.

CHAPTER 3—MONTANA BEER ACT—LICENSING SALE OF BEER
UNDER SUPERVISION OF STATE LIQUOR CONTROL BOARD

Section

- 4-317. Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.
- 4-324. Tax on imported beer—computation in case of barrels of capacity other than thirty-one (31) gallons.
- 4-330. Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.
- 4-337. Railroad car or carrier's license—application for and issuance of license—inspection—sale to persons under nineteen (19) years of age or disorderly person.
- 4-347. Revenue to be paid to state treasurer—disposition of revenue.
- 4-347.1. Revenue allocation.

4-317. (2815.22) Licenses of brewers—persons to whom brewers may sell beer—barrelage tax. (1) * * * [Same as parent volume.]

(2) In addition to the annual license tax imposed by section 4-341, a tax of three dollars (\$3) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-311.

History: En. Sec. 13, Ch. 106, L. 1933;
amd. Sec. 4, Ch. 46, Ex. L. 1933; amd. Sec.
4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135,
L. 1959; amd. Sec. 1, Ch. 296, L. 1969;
amd. Sec. 1, Ch. 421, L. 1971.

Amendments

The 1969 amendment added to the end

of subsection (2) a proviso increasing the tax from \$1.50 to \$3.00 per barrel for the biennium ending June 30, 1971.

The 1971 amendment made the 1969 change permanent by changing the tax specified in subsection (2) from \$1.50 to \$3.00 and deleting the proviso added by the 1969 amendment.

4-324. (2815.29) Tax on imported beer—computation in case of barrels of capacity other than thirty-one (31) gallons. A tax of three dollars (\$3) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the board in determining the amount of tax due, as herein provided for.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971.

Amendments

The 1969 amendment added to the end

of the section a proviso increasing the tax from \$1.50 to \$3.00 per barrel for the biennium ending June 30, 1971.

The 1971 amendment made the 1969 change permanent by increasing the tax specified at the beginning of the section from \$1.50 to \$3.00 and deleting the proviso added by the 1969 amendment.

4-330. (2815.33) Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers. It shall be unlawful for such retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this act.

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of nineteen (19) years;
2. to 4. * * * [Same as parent volume.]

Any brewer, wholesaler or retailer violating any of the provisions of this section, shall upon conviction thereof be subject to the penalties provided for in section 4-305 of the Montana Beer Act, and in addition thereto the license of any such brewer, wholesaler or retailer shall, in the discretion of the board, be immediately revoked, or said license may be suspended for a period of not more than three (3) months. Any minor or other person who knowingly misrepresents his or her qualification for the purpose of obtaining beer from any licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-305 of the Montana Beer Act.

History: En. Sec. 31, Ch. 106, L. 1933; amd. Sec. 11, Ch. 46, Ex. L. 1933; amd. Sec. 7, Ch. 166, L. 1951; amd. Sec. 2, Ch. 240, L. 1971.

specified in item 1 of the second paragraph from 21 to 19 years; and deleted "Indian" after "Any minor" near the beginning of the second sentence of the third paragraph.

Amendments

The 1971 amendment reduced the age

4-337. (2815.40) Railroad car or carrier's license—application for and issuance of license—inspection—sale to persons under nineteen (19) years of age or disorderly person. Any person maintaining or operating any railroad car or train as a common carrier for the transportation of passengers, or any other person operating a buffet or dining car for any common carrier, desiring to sell beer under the provisions of this act, shall first apply to the board for a permit so to do, accompanying the application with the license fee herein prescribed. Upon being satisfied from said application or otherwise that the applicant is qualified under the provisions of this act, the board shall issue a license for the sale of beer by such person, which shall at all times be prominently displayed in the car, operated by the applicant, wherein beer or malt liquors are served. The board shall have the right at any time to make an inspection of the train or cars operated by any railway company in this state, to ascertain whether this act is being strictly complied with, and if not, the board is authorized and empowered to cancel such license, after which the sale of any beer or malt liquors by any such common carrier, or other person

operating buffet or dining car for such common carrier, shall be unlawful and subject to the penalties herein prescribed. And it shall be unlawful for any such common carrier, or other person operating buffet or dining car for such common carrier, to sell beer or malt liquors to any person under the age of nineteen (19) years or who may appear to be in an intoxicated or disorderly condition.

History: En. Sec. 36, Ch. 106, L. 1933; amd. Sec. 3, Ch. 246, L. 1947; amd. Sec. 3, Ch. 240, L. 1971.

Amendments

The 1971 amendment reduced the age specified near the end of the section from 21 to 19 years.

4-347. (2815.50) Revenue to be paid to state treasurer—disposition of revenue. Except as provided in section 4-347.1 of this act, all fees, charges, taxes and revenues collected by or under authority of the Montana liquor control board, under the Montana Beer Act shall be paid over to the state treasurer on or before the tenth (10th) day of each and every month who shall deposit said funds to the credit of the state general fund.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949; amd. Sec. 20, Ch. 249, L. 1967; amd. Sec. 3, Ch. 296, L. 1969; amd. Sec. 3, Ch. 421, L. 1971.

tion 4-347.1" for "section 4"; and made a minor change in style.

Separability Clause

Section 5 of Ch. 296, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Amendments

The 1969 amendment inserted "Except as provided in section 4 of this act."

The 1971 amendment substituted "sec-

4-347.1. Revenue allocation. All revenue received from taxes on beer under sections 4-317 and 4-324, R.C.M. 1947, over and above one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the earmarked revenue fund. The state treasurer shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it shall cease to receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health.

History: En. 4-347.1 by Sec. 4, Ch. 421, L. 1971.

Title of Act

An act amending sections 4-317, 4-324 and 4-347, R.C.M. 1947, and section 4,

Chapter 296, Laws of 1969, to make the current beer barrelage tax permanent; providing for severability; repealing all acts and parts of acts in conflict herewith.

a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

Separability Clause

Section 4 of Ch. 421, Laws 1971 read "If any section, subdivision, sentence or word of this act shall be determined by

Repealing Clause

Section 5 of Ch. 421, Laws 1971 repealed all acts and parts of acts in conflict therewith.

CHAPTER 4—MONTANA RETAIL LIQUOR LICENSE ACT—SALES BY
LICENSEES OF BOARD

Section

4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation.

4-413. Persons to whom liquor may not be sold or given.

4-439. Penalty for violating act—revocation of license.

4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation. (1) Except as otherwise provided by law, a license to sell liquor at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person who shall be approved by a majority of the board as a fit and proper person to sell liquor; provided, that the number of retail liquor licenses which the board may issue shall be determined as follows:

(a) The number of retail liquor licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail liquor licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail liquor licenses for the first one thousand (1000) inhabitants and one (1) retail liquor license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail liquor licenses for the first three thousand (3000) inhabitants and one (1) retail liquor license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail liquor licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail liquor licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles

from their respective corporate limits, shall be determined on the basis of the combined population of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail liquor licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail liquor license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail license may be issued by the board for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) * * * [Same as parent volume.]

(2) * * * [Same as parent volume.]

(3) Resort licenses. It is the intent and purpose of this act to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the board under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this act, the board may issue resort retail liquor licenses in a resort area.

For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the board as hereinafter provided.

The board shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules and regulations to be promulgated within one hundred eighty (180) days after the passage and approval of this act. In addition to the other requirements of this act, a resort area for the purposes of qualification for the issuance of resort retail liquor license must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than five hundred thousand dollars (\$500,000), at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in the next paragraph. The word control shall mean lands held under lease, option, or permit. Before first adopting such rules

and regulations in regard to resort liquor licenses, the board shall publish a notice of the hearing to be held on said rules and regulations in a regularly published newspaper in the cities of Billings, Bozeman, Butte, Great Falls, Helena, Miles City, Kalispell and Missoula, Montana, said publication to be published in said newspapers at least once a week for four consecutive weeks, the last of said publications being at least ten (10) but not more than thirty (30) days prior to the date set for said hearing, which shall be held in Helena, Montana, at a time and place designated by the board.

The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries designating the ownership of the lands within the resort area which plat must be verified by the resort developer or landowner, and filed with the board prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings, and other improvements to be built in said area in which resort retail liquor licenses are to, or may, be located. A master plan for the development of the said area may be filed by the resort developer in satisfaction of this section.

Upon such filing the board shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the board. At least thirty (30) days prior to the date of the hearing, the board shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the board an amount sufficient to cover the costs of said publication. Persons may present statements to the board at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the board shall accept or reject the plat. If rejected the board must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the board may be reviewed pursuant to the review procedure set forth in section 4-425 herein.

Once filed with the board, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the board, which approval shall be according to public convenience and necessity.

When the board has accepted a plat and a given resort area has been determined, applications may then be filed with the board by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.

If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete at the time of such application, the board shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed

premises have been met, setting forth such time limitations and requirements as the board may establish.

In addition to the restrictions on sale or transfer of a license as provided in section 4-410 herein, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars (\$2,000) for each such license.

A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-403 (1) (a) above and a resort retail liquor license shall be issued by the board on the basis that the board has determined that such license is justified by public convenience and necessity, following a hearing as provided in section 4-407.1.

If any clause, sentence, paragraph, section, or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act.

History: En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 217, L. 1963; amd. Sec. 1, Ch. 322, L. 1971.

Amendments

The 1971 amendment added subsection

(3) relating to issuance of resort liquor license; and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 322, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

4-413. Persons to whom liquor may not be sold or given. No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any liquor, beer or wine to:

1. Any person under the age of nineteen (19) years.
2. to 5. * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 84, L. 1937; amd. Sec. 3, Ch. 221, L. 1939; amd. Sec. 1, Ch. 71, L. 1953; amd. Sec. 4, Ch. 240, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subdivision 1 from 21 to 19 years.

4-439. Penalty for violating act—revocation of license. Any person violating any of the provisions of this act, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided by law, except as is herein otherwise provided. If any such licensee is convicted of any offense under this act his license shall be immediately revoked, or in the discretion of the board suspended temporarily for a time to be determined by the board. Further, if any person under the age of nineteen (19) is convicted of an offense under this act he shall be subject to a one hundred dollar (\$100) fine or thirty (30) days in confinement. It shall be further mandatory under the provisions of this act that all such licensees display in a prominent place in his premises a placard as issued by the board stating fully

the consequences for violations by persons under the age of nineteen (19) years of the provisions of this act.

Any person who invites a person under the age of nineteen (19) years into a public place where liquor is sold and treats, gives or purchases liquor for such person, or permits such person in a public place where liquor is sold to treat, give or purchase liquor for him, or holds out such person to be over the age of nineteen (19) years to the owner of the liquor establishment, or his or her employee or employees, shall be guilty of a misdemeanor.

History: En. Sec. 38, Ch. 84, L. 1937;
amd. Sec. 2, Ch. 226, L. 1947; amd. Sec.
1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240,
L. 1971.

Amendments

The 1971 amendment reduced the age specified throughout the section from 21 to 19 years, and made a minor change in style.

CHAPTER 5—IDENTIFICATION CARDS

Section

4-502. Identification card—form.

4-504. License of licensee not to be revoked or suspended for selling to minor when identification card properly completed, signed and filed.

4-506. All persons attaining the age of nineteen (19) years may apply to the county clerk and recorder for an identification card.

4-502. Identification card—form. Any person who desires to procure any beer and/or liquor from any vendor or licensee may, for the purpose of aiding such vendor or licensee to determine whether or not such person is at least nineteen (19) years of age, be required to complete and sign an identification card, which shall be in substantially the following form:

ALCHOLIC BEVERAGES IDENTIFICATION CARD

This card if properly completed and signed may be accepted by the vendor or licensee named below for the purpose of establishing the legal age of the person designated who desires to purchase alcoholic beverages.

Complete Two or More of the Following:

Social Security Card No.; Issued at Date

Birth Certificate issued at; Date of Birth.....

Draft Card issued at; Date of birth

Discharge Papers: Service; Issued at

Date of birth

Military Identification Card or Pass: Service;

Issued at Date Age Shown

Driver's License: Date; Issued at

Age Shown

I hereby represent to that I am over the age of nineteen (19) years, having been born on the day of, 19....., at, and this statement is made for the purpose of establishing my age in order to obtain service of alcoholic beverages with the full knowledge that I am subject to fine and/or imprisonment, for any misrepresentation made herein. I have submitted the documents and papers checked on this card, and the person to whom submitted has compared

the signatures thereon and has also compared the descriptions on said documents with my physical characteristics.

(Witness) _____ (Signature) _____

(Address) _____ (Address) _____

The Montana liquor control board shall cause to be printed and distributed upon request to vendors and licensees blank forms of the identification card herein prescribed.

History: En. Sec. 2, Ch. 107, L. 1955;
amd. Sec. 16, Ch. 154, L. 1965; amd. Sec.
6, Ch. 240, L. 1971.

Amendments

The 1971 amendment reduced the specified age from 21 to 19 years in two places; and made a minor change in punctuation.

4-504. License of licensee not to be revoked or suspended for selling to minor when identification card properly completed, signed and filed. The license of any licensee in possession of an identification card properly completed, signed and filed as provided in this act shall not be suspended or revoked for selling beer and/or liquor to a person under the age of nineteen (19) years who has presented such identification card at the time of purchase and delivered the same for filing as herein provided.

History: En. Sec. 4, Ch. 107, L. 1955;
amd. Sec. 7, Ch. 240, L. 1971.

Amendments

The 1971 amendment reduced the age specified in the latter part of the section from 21 to 19 years.

4-506. All persons attaining the age of nineteen (19) years may apply to the county clerk and recorder for an identification card. All persons attaining the age of nineteen (19) years may apply to the county clerk and recorder of the county in which the applicant resides for an identification card which shall prima facie establish that the applicant has reached the age of nineteen (19) years.

History: En. Sec. 1, Ch. 190, L. 1957;
amd. Sec. 8, Ch. 240, L. 1971.

Amendments

The 1971 amendment reduced the specified age from 21 to 19 years in two places.

TITLE 5—BANKS AND BANKING

Chapter

- 5. Miscellaneous regulatory provisions, 5-523, 5-527.
- 9. Examination and supervision—state examiner's fund, 5-902, 5-908, 5-910.
- 10. General powers and limitations of banks, 5-1058 to 5-1062.

CHAPTER 5—MISCELLANEOUS REGULATORY PROVISIONS

Section

- 5-523. Limitations on loans—liabilities—what included therein—reduction when excessive.
- 5-527. Interest not to exceed lawful rate—permissible charges on installment loans.

5-523. (6014.48) Limitations on loans—liabilities—what included therein—reduction when excessive. The total loans to any person, copartnership or corporation by any bank, including loans to a copartnership, and loans to the several members thereof, shall at no time exceed twenty per centum (20%) of the amount of the unimpaired capital and surplus of such bank. The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating the same, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, shall not be considered as money borrowed, nor shall the foregoing limitations apply to loans and investments secured by obligations of the United States having a value of one hundred per cent (100%) of the amount thereof or to loans made on warehouse receipts and bills of lading, when such warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty per cent (120%) of the amount loaned thereon. Loans or obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

The combined liabilities of the several members of any firm, copartnership or unincorporated association to the loaning bank shall be included in the liabilities of such firm, copartnership or unincorporated association, and the liabilities of such firm, copartnership or unincorporated association shall be included in the liabilities of any member thereof in determining the foregoing limitations.

When in the judgment of the superintendent of banks, the liabilities of any corporation or the combined liabilities of any corporation and one or more of its stockholders to any bank are excessive, he shall require the reduction thereof to such limits and within such time as he shall prescribe.

History: En. Sec. 44, Ch. 89, L. 1927; amd. Sec. 1, Ch. 71, L. 1943; amd. Sec. 1, Ch. 6, 1969.

Amendments

The 1969 amendment inserted "to loans

and investments secured by obligations of the United States having a value of one hundred per cent (100%) of the amount thereof or" in the second sentence of the first paragraph.

5-527. (6014.52) Interest not to exceed lawful rate—permissible charges on installment loans. No bank shall demand or receive for loans or discounts, a rate of interest exceeding that allowed by law, excepting that it shall be lawful for any bank to receive interest in advance according to the ordinary usages of banking institutions. On loans to be repaid in one or more deferred installments a bank may charge not to exceed the following schedule: On so much of the principal balance as does not exceed three hundred dollars (\$300), eleven dollars (\$11) per one hundred dollars (\$100) per year; if the principal balance exceeds three hundred dollars (\$300), but is less than one thousand dollars (\$1,000), nine dollars (\$9) per one hundred dollars (\$100) per year on that portion over three hundred dollars (\$300); if the principal balance exceeds one thousand dollars (\$1,000), seven dollars (\$7) per one hundred dollars (\$100) per year on that portion over one thousand dollars (\$1,000). Such charges shall be computed on the principal balance on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total balance thereof is required to be paid in installments. A minimum charge of twenty dollars (\$20) may be made with respect to any installment loan made by a bank. When an installment loan contract provides for payment other than in equal successive monthly installments the charge may be at a rate which will provide the same yield as is permitted monthly payment contracts having due regard for the schedule of payments in the contract.

History: En. Sec. 48, Ch. 89, L. 1927; amd. Sec. 1, Ch. 239, L. 1969.

Amendments

The 1969 amendment added provisions relating to permissible charges on installment loans.

CHAPTER 6—STATE BANKING DEPARTMENT—STATE EXAMINER EX
OFFICIO SUPERINTENDENT OF BANKS

5-601. (6014.59) State banking department—superintendent, etc.

Cross-References

Department abolished and functions transferred, sec. 82A-402(1).

5-602. (6014.60) State superintendent of banks.

Cross-References

Superintendent's position abolished and functions transferred, sec. 82A-402(1).

CHAPTER 9—EXAMINATION AND SUPERVISION—
STATE EXAMINER'S FUND

Section

- 5-902. Reports and records of superintendent.
 5-908. Payments by banks, investment and trust companies.
 5-910. Special examinations and fees.

5-902. (6014.76) Reports and records of superintendent. The superintendent of banks shall keep all proper records and files pertaining to the duties and work of his office, and shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 72, Ch. 89, L. 1927;
 amd. Sec. 7, Ch. 93, L. 1969.

reference to section 82-4002 for specific provisions relating to the contents, printing and distribution of the annual reports to the governor.

Amendments

The 1969 amendment substituted the

5-903 to 5-907. (6014.77 to 6014.81) Repealed.

Repeal

Sections 5-903 to 5-907 (Sec. 73, Ch. 89, L. 1927; Sec. 1, Ch. 167, L. 1929; Sec. 1, Ch. 195, L. 1945; Sec. 1, Ch. 48, L. 1953; Sec. 1, Ch. 49, L. 1953; Sec. 1, Ch. 50, L. 1953; Sec. 1, Ch. 138, L. 1959; Sec. 1, Ch. 139, L. 1959; Sec. 1, Ch. 159, L. 1959; Sec. 1, Ch. 186, L. 1959), relating to pay-

ments by local governments into the state treasury, were repealed by Sec. 6, Ch. 256, Laws 1971.

Repealing Clause

Section 6 of Ch. 256, Laws 1971 read "Sections 5-903, 5-904, 5-905, 5-906, 5-907, R.C.M. 1947, are repealed."

5-908. (6014.82) Payments by banks, investment and trust companies. For the credit of the general fund of the state, each bank, trust company or investment company, under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the last day of June of each year, a supervision fee of four hundred dollars (\$400). An examination fee of ten cents (10¢) for each one thousand dollars (\$1000) of total assets as of the date of the examination shall be paid at the conclusion of the examination.

History: En. Sec. 73, Ch. 89, L. 1927;
 amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1,
 Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L.
 1959; amd. Sec. 1, Ch. 256, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

5-910. (6014.84) Special examinations and fees. Special examinations may be made of any bank, trust company, investment company, building and loan association, or credit union when in the judgment of the superintendent of banks it shall be deemed necessary, and such special examination shall be charged for at the rate of one hundred dollars (\$100) a day for each person engaged in the examination. All special examination fees or charges shall be paid at the conclusion of the examination and the moneys so collected by the state examiner and ex officio superintendent of banks shall be paid to the state treasurer, for the credit of the general fund.

History: En. Sec. 2, Ch. 167, L. 1929;
 amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1,
 Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L.

1959; amd. Sec. 222, Ch. 147, L. 1963;
 amd. Sec. 22, Ch. 249, L. 1967; amd. Sec.
 5, Ch. 256, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(b).

CHAPTER 10—GENERAL POWERS AND LIMITATIONS OF BANKS**Section**

5-1058. Definitions.

5-1059. Power of commissioner.

5-1060. Powers of officers.

5-1061. Notice to commissioner.

5-1062. Effect of closing.

5-1058. Definitions. As used in this act, unless the context otherwise requires:

(1) "Commissioner" means the officer of this state designated by law to exercise supervision over banks, and any other person lawfully exercising such powers.

(2) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and to the extent that the provisions hereof are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.

(3) "Officers" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank, to act for the bank in carrying out the provisions of this act or, in the absence of any such designation or of the officer or officers so designated, the president or any other officer currently in charge of the bank or of the office or offices in question.

(4) "Office" means any place at which a bank transacts its business or conducts operations related to its business.

(5) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at one or more or all of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any one or more of the following: fire; flood; earthquake; hurricanes; wind, rain, or snowstorms; labor disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, housing, food, transportation or labor; robbery or attempted robbery; actual or threatened enemy attack; epidemics or other catastrophes; riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

History: En. Sec. 1, Ch. 32, L. 1971.

Title of Act

An act to permit banks to suspend business during an emergency and on

any day or days proclaimed as a day or days of mourning, rejoicing, or other special observance and amending section 19-107, R.C.M. 1947.

5-1059. Power of commissioner. Whenever the commissioner is of the opinion that an emergency exists, or is impending, in this state or in any part or parts of this state, he may, by proclamation, authorize banks

located in the affected area or areas to close any or all of their offices. In addition, if the commissioner is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, he may authorize the particular bank or banks, or office or offices so affected, to close. The office or offices so closed shall remain closed until the commissioner proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that one or more offices, theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen.

History: En. Sec. 2, Ch. 32, L. 1971.

5-1060. Powers of officers. A. Whenever the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, one or more or all of a bank's offices, they shall have the authority, in the reasonable and proper exercise of their discretion, to determine not to open any one or more or all of such offices on any business or banking day or, if having opened, to close any one or more or all of such offices during the continuation of such emergency, even if the commissioner has not issued and does not issue a proclamation of emergency. The office or offices so closed shall remain closed until such time as the officers determine that the emergency has ended, and for such further time thereafter as may reasonably be required to reopen; however, in no case shall such office or offices remain closed for more than forty-eight (48) consecutive hours, excluding other legal holidays, without requesting the approval of the commissioner.

B. The officers of a bank may close any one or more or all of the bank's offices on any day or days designated, by proclamation of the president of the United States or the governor of this state, as a day or days of mourning, rejoicing, or other special observance.

History: En. Sec. 3, Ch. 32, L. 1971.

5-1061. Notice to commissioner. A bank closing an office or offices pursuant to the authority granted under section 3 (A) [5-1060 (A)] of this act shall give as prompt notice of its action as conditions will permit and by any means available, to the commissioner, and in the case of a national bank, to the comptroller of the currency.

History: En. Sec. 4, Ch. 32, L. 1971.

5-1062. Effect of closing. Any day on which a bank, or any one or more of its offices, is closed during all or any part of its normal banking hours pursuant to the authorization granted under this act shall be, with respect to such bank or, if not all of its offices are closed, then with respect to any office or offices which are closed, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss of rights of any kind, on the part of any bank, or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by this act.

The provisions of this act shall be construed and applied as being in addition to any other law of this state or of the United States, authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control, or otherwise.

History: En. Sec. 5, Ch. 32, L. 1971.

CHAPTER 11—CLOSING AND LIQUIDATION OF BANKS

5-1124. (6014.154) Repealed.

Repeal

Section 5-1124 (Sec. 1, Ch. 129, L. 1931), relating to maintenance of offices of consolidated banks, was repealed by Sec. 1, Ch. 205, Laws 1969. Section 2 of the re-

pealing act provided that the repeal did not affect any transaction, proceeding or application pending or consummated on or prior to effective date of repeal.

TITLE 6—BONDS AND UNDERTAKINGS

CHAPTER 2—OFFICIAL BONDS OF COUNTY OFFICERS

6-205. State examiner to determine adequacy of amount.

Cross-References

Examiner's functions transferred, sec.
82A-903(3)(c).

CHAPTER 4—PUBLIC WORKS CONTRACTOR'S BOND

6-402. (5668.42) Notice to contractor of furnishing provender, etc.

Raising Lack of Notice as Defense

In action by materialman against general contractor for material supplied subcontractor, general contractor could not raise affirmative defense that statutory notice was not given for first time upon submitting proposed findings of fact and conclusions of law where materialman alleged that he had complied with all conditions precedent to bringing the suit and general contractor entered a general denial since general denial did not put notice in issue. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

Waiver of Notice

In an action by materialman against general contractor for materials supplied subcontractor, general contractor waived right to notice from materialman where he knew from beginning that the materialman was supplying masonry materials to subcontractor for the job and consented thereto. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

CHAPTER 6—OFFICIAL BONDS OF CITY OR TOWN OFFICERS AND EMPLOYEES

6-603. Determination of adequacy of bond by state examiner.

Cross-References

Examiner's functions transferred, sec.
82A-903(3)(d).

TITLE 8—CARRIERS AND CARRIAGE

Chapter

1. Motor carriers—license and regulation, 8-101, 8-101.1, 8-101.2, 8-103, 8-103.1 to 8-103.3, 8-104.4, 8-110, 8-111, 8-111.1, 8-119, 8-126, 8-127, 8-131.

CHAPTER 1—MOTOR CARRIERS—LICENSE AND REGULATION

Section

- 8-101. Definition of terms.
 - 8-101.1. Transportation of livestock by farmers and ranchers exempt.
 - 8-101.2. Certificate required for commercial transportation of livestock.
- 8-103. Board of railroad commissioners to supervise and regulate motor carriers—appointment and duties of supervisor.
 - 8-103.1. Leasing of power equipment.
 - 8-103.2. Interchange of equipment.
 - 8-103.3. Lease of Montana railroad commission certificate.
 - 8-104.4. Rate preference, discrimination forbidden.
- 8-110. Certificate required of class C motor carriers—contents of application—fee.
- 8-111. Hearing to consider applications—notice—matters considered—manner of conducting hearings.
 - 8-111.1. Time for hearing and issuance of finding, order or decision.
- 8-119. Penalties for violations.
- 8-126. Fees required for filing various documents.
- 8-127. Additional fees covering motor carriers.
- 8-131. Temporary authority for service—duration—extension.

8-101. (3847.1) Definition of terms. Unless the language or context clearly indicates that different meanings are intended, the following words, terms and phrases shall, for the purposes of this act, be given the meanings hereinafter subjoined to them.

(a) to (g). * * * [Same as parent volume.]

(h) The term “motor carrier,” when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the state of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; provided that nothing in this act shall be construed as affecting motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation, or, the operation of school buses which are used in conveying school children to and from district or other schools, or the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by any person, firm or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, in so far as the use of employees, supplies and materials in construction and production is concerned, or the transportation of property by motor vehicle within any city, town, or village with a population, according to the latest United States census, of less than five hundred (500)

persons, or within the commercial areas thereof as determined by the board, or the transportation of newspapers, newspaper supplements, periodicals or magazines, or those tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked or disabled vehicles or while such tow trucks and wreckers are rendering assistance to abandoned, wrecked or disabled vehicles, or ambulances.

(i) to (k). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 184, L. 1931; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971.

Amendments

The 1969 amendment added "or the transportation of newspapers * * * or ambulances" at the end of subdivision (h).

The 1971 amendment deleted "ordinary livestock or" before "agricultural commodities" near the beginning of the proviso to subdivision (h); and made a minor change in style.

Constitutionality

Trial court erred in granting defendant's motion to dismiss where complaint alleged that certain portions of this act violated constitutions of state and United States since summary procedure should not be used in cases involving important public issues where any fact is in dispute unless trial judge is satisfied that evidence is sufficient to give him the necessary background of knowledge. *Garrett Freightlines, Inc. v. Montana Railroad & Public Service Commission*, 153 M 380, 457 P 2d 469.

8-101.1. Transportation of livestock by farmers and ranchers exempt.

The provisions of this act shall not apply to the transportation of livestock by motor carrier by a bona fide farmer, rancher, or raiser of livestock in his own vehicle or vehicles, or when such farmer, rancher, or raiser of livestock provides transportation for the livestock of another farmer, rancher, or raiser of livestock between farm and farm, ranch and ranch, pasture and pasture, or to a point.

History: En. Sec. 2, Ch. 275, L. 1971.

8-101.2. Certificate required for commercial transportation of livestock.

No person, firm, corporation, association or its or their officers, agents, employees, or servants, shall operate any motor vehicle or combination of vehicles in the commercial transportation of livestock for hire, without having first obtained a class B certificate of public convenience and necessity from the board. Provided, however, if any such person, firm, corporation, association or its or their officers, agents, employees, or servants, or its or their legal predecessor in interest, was in bona fide operation as a motor carrier, transporting livestock commercially, on July 1, 1970, over the territory for which application is made and has so operated since that time, or, if engaged in a seasonal service, was in bona fide operation during the season ordinarily covered during the year 1970, and has so operated since that time, upon such proof thereof as may be required by the board, the board shall issue a class B certificate of public convenience and necessity authorizing commercial transportation of livestock throughout the state without a hearing therefor, if application for such certificate is made to the board as provided in section 8-109 of this code, within one hundred eighty (180) days after July 1, 1971. Otherwise, the application for a certificate shall be granted or denied by the board as provided for in section 8-111 of this code. Nothing herein provided shall relieve the

holder of a class B certificate authorizing the commercial transportation for hire of livestock as provided for herein from any obligation, duty, fee or other requirement of the Motor Carrier Act.

History: En. Sec. 3, Ch. 275, L. 1971.

8-103. (3847.3) Board of railroad commissioners to supervise and regulate motor carriers—appointment and duties of supervisor. (a) The board of railroad commissioners is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate every motor carrier in this state; to fix specific, just, reasonable, equal and nondiscriminatory rates, fares, charges and classifications for class A and class B motor carriers; to regulate the properties, facilities, operations, accounts, service, practices, affairs and safety of operations of all motor carriers; to require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public. To fully secure adequate motor transportation facilities for all users of such service, and to secure the public advantages thereof, the board shall encourage a system of common carrier motor transportation within the state for the convenience of the shipping public. The maintenance of a common carrier motor transportation system within Montana is hereby declared to be a public purpose. The board shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers.

(b) and (c) * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 184, L. 1931; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971.

Amendments

The 1971 amendment inserted the second and third sentences in subsection (a).

Duties of Board

Under this section and section 8-112

board of railroad commissioners is authorized, and has duty, to supervise every motor carrier in state and may, in its discretion, upon issuance of any certificate, attach such terms and conditions as in its judgment may be required. Walter v. Board of Railroad Commrs., 153 M 384, 457 P 2d 479.

8-103.1. Leasing of power equipment. All class A, B and C carriers subject to the jurisdiction of the board of railroad commissioners may lease power equipment for the purpose of performing transportation movements within the state of Montana. The leasing of such power units must be in writing and effective only upon specific approval of the board. Movement of such leased units without prior approval of the board is prohibited.

All leases must contain (1) the full names and addresses of negotiating parties, (2) a complete description of each vehicle involved, (3) provision that the sole possession, responsibility, control and direction of each vehicle and its driver resides with the lessee for the entire term of the lease, (4) provision that the lessee assumes full responsibility for all regulatory fees, (5) amount of compensation to be paid for use of the vehicle while under the lease and the method by which such compensation is determined, (6) the renewal conditions of the lease, if any, and (7) the term length of the lease.

A copy of the lease, certified by the board, must be maintained in each leased vehicle at all times.

Each power unit so leased must display in a conspicuous place on both sides of such vehicle the identity and address of the lessor, and lessee, and the certificate number under which the power unit is operating. The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited.

History: En. 8-103.1 by Sec. 1, Ch. 105, L. 1969.

Title of Act

An act providing that all authorized carriers within the state may lease power equipment for the purpose of performing transportation movements, providing further that the leasing of such power units

must be in writing and effective only upon specific approval of the board, setting forth the provisions required in the lease, providing that a copy of the lease, approved by the board, be maintained in each leased vehicle, providing for proper decals on each leased vehicle, leasing of power units by an authorized carrier to a noncertified carrier prohibited.

8-103.2. Interchange of equipment. Common carriers authorized by the board may enter into interchange agreements with other authorized common carriers providing for the interchange of equipment. Such agreements must be joint applications made to the board by the carriers affected. To be approved by the board the interchange must take place at a fixed terminal where the carriers' routes intersect. Manifests, waybills or agreements and all shipping data must be in the possession of the operator of the interchanged equipment. When an interchange has been authorized such equipment shall be operated only by the certificate holder over whose route such equipment is being operated. Interchange agreements between contract carriers, class C, is prohibited.

History: En. 8-103.2 by Sec. 1, Ch. 106, L. 1969.

Title of Act

An act providing for authorized common carriers to enter into interchange agreements with other authorized common carriers, providing for joint applica-

tions for such agreements, providing that the interchange must take place at a fixed terminal where the carriers' routes intersect, providing further for shipping data to be in the possession of the operator of the interchanged equipment, interchange agreements between contract carriers prohibited.

8-103.3. Lease of Montana railroad commission certificate. An authorized carrier operating within the state of Montana may lease its certificate, or any integral segment thereof, to another carrier only by approval of the board. The contract or lease, under which the certificate is leased, must be in writing and approved by the board prior to any operation under the certificate. The contract or lease must specify: (a) the period for which a certificate is to be leased, which shall not be less than (30) days; (b) the compensation to be paid; (c) the time or date upon which the lease will commence and terminate; (d) and the signatures of the parties thereto. Operation under the certificate is prohibited until approved by the board in writing. During the period of the contract or lease transportation movements under the contract or lease must be performed by the entity contracting for or leasing the certificate, or any integral segment thereof, while transportation movements by the owner, lessor, is prohibited.

History: En. 8-103.3 by Sec. 1, Ch. 107, L. 1969.

Title of Act

An act providing that authorized carriers within the state may lease operating certi-

ficates, or any integral segment thereof, upon board approval; providing that the contract or lease must be in writing and specifying the provisions contained therein; providing that transportation movements under the certificate be prohibited until approved by the board in writing.

Transportation during the term of the contract or lease to be performed by the entity contracting for or leasing certificate; transportation during the term of the contract or lease by the owner, lessor, is prohibited.

8-104.4. Rate preference, discrimination forbidden. All rates, fares, charges, classifications, or rules of service for the transportation of property and/or persons upon the public highways of this state must be fair, just, reasonable, and nondiscriminatory, and no motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, partnership, corporation or locality, or any particular description of traffic, nor shall such motor carrier subject any particular person, company, partnership, corporation, or locality, or any particular description of traffic, to any prejudice or disadvantage in any respect. Nothing herein provided shall prevent the board from authorizing different rates or schedules of rates for service between the same places, or between different points of origin and/or destination within the same places, when such different rates are justified by the differing character of service to be rendered by the carrier to a shipper or consignee.

The board may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier; if the board shall find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of service which shall be fair, just, reasonable, and nondiscriminatory, and it shall order the affected motor carrier or carriers to conform to such modified schedule; provided, however, that each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the board.

History: En. Sec. 4, Ch. 201, L. 1961; amd. Sec. 2, Ch. 182, L. 1971.

Amendments

The 1971 amendment added the second sentence to the first paragraph and made a minor change in punctuation.

8-110. (3847.10) Certificate required of class C motor carriers—contents of application—fee. (1) (a) No class C motor carrier as in this act defined, except any class C motor carrier operating pursuant to the terms and conditions of a United States government contract, agency or department thereof, shall hereafter operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities, or for the transportation of persons on any public highway in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operation.

(b) and (c) * * * [Same as parent volume.]

(2) The transportation for hire of any persons or commodities between any two (2) points within the state of Montana by any motor carrier pursuant to the terms of a written contract between said carrier and

the United States government, agency or department thereof, shall be deemed a transportation movement subject to the provisions of the Montana Motor Carrier Act, R. C. M., 1947, 8-101 et seq., provided, however, that the presentation of the written contract to the board shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government contract.

The class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government contract may be issued by the board upon receipt of an executed copy of the United States government contract. The certificate of public convenience and necessity may be issued thereafter without requiring the board to fix a time and place for public hearing.

The certificate of public convenience and necessity, issued pursuant to the terms of the United States government contract, is authorized only for the duration of the United States government contract concerned, provided, however, the certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government contract.

History: En. Sec. 10, Ch. 184, L. 1931; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971.

Amendments

The 1971 amendment designated the former language as subsection (1); in-

serted "except any class C motor carrier operating pursuant to the terms and conditions of the United States government contract, agency or department thereof" in subdivision (1)(a); and added subsection (2).

8-111. (3847.11) Hearing to consider applications—notice—matters considered—manner of conducting hearings. Upon the filing of such application by a class A or class B or class C motor carrier, except a class C motor carrier authorized to operate under the terms of a United States government contract, agency or department thereof, the board shall fix a time and place for hearing thereon, which shall not be less than ten (10) days after such filing. The board shall cause a copy of such petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the board might be affected by the granting of any such certificate and upon any railroad company operating into or through any town or city located on the proposed route of the applicant, and upon the state highway commission, at least ten (10) days before the date of hearing, and any such motor carrier or railroad company, and the state highway commission, and the governing board or boards of any such county, town or city into or through which such route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to such proceedings, and may offer testimony for or against the granting of such certificate. If after hearing upon application for a certificate, the board shall find, from the evidence, that public convenience and necessity require the authorization of the service proposed, or any part thereof as the board shall determine, a certificate therefor shall be issued. In determining whether or not a certificate should be issued, the board shall give reasonable consideration to the transportation service being furnished or that will be

furnished by any railroad, or other existing transportation agency, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year and the effect which such proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby. Provided, however, that an application by a class A or a class B or a class C motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the board that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the board that public convenience and necessity do not require such proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over said route or in said territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require such motor carrier operation.

Provided further that any investigation, inquiry or hearing which the board has power to undertake or to hold, under the provisions of this act, may be undertaken or held by or before any member of the board, or by and before any agent or examiner of the board designated for the purpose by the board, and every finding, order, or decision made by a member of the board, or agent or examiner of the board so designated, together with a statement in writing of the reasons therefor which statement must be included in such finding, or order or decision, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the board and ordered filed in its office, shall be, and be deemed to be the finding, order or decision of the board; provided also, that any agent or examiner of the board designated as aforesaid, shall have power to administer oaths, examine witnesses and receive evidence.

History: En. Sec. 11, Ch. 184, L. 1931; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971.

Amendments

The 1971 amendment inserted "except

a class C motor carrier authorized to operate under the terms of a United States government contract, agency or department thereof" in the first sentence of the first paragraph.

8-111.1. Time for hearing and issuance of finding, order or decision.

All applications for certificates of public convenience and necessity as class A, class B, or class C carriers, except class C carriers operating pursuant to the terms and conditions of a United States government contract, agency or department, filed by motor carriers before the board of railroad commissioners must be set for hearing at a date and time certain, which said date of hearing must be not more than sixty (60) days after the date of filing of said application before said board, and the board must issue its finding, order or decision on said application and the evidence presented in support thereof at the time of said hearing within ninety (90) days from and after the said date of the filing of said application.

History: En. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971.

Amendments

The 1971 amendment inserted "except

class C carriers operating pursuant to the terms and conditions of a United States government contract, agency or department" near the beginning of the section.

Effective Date

Section 4 of Ch. 69, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

8-112. (3847.12) Authorization of board required for transfer of privilege, etc.

Attachment of Terms and Conditions

Under this section and section 8-103 board of railroad commissioners is authorized, and has duty, to administratively supervise every motor carrier in state and

may, in its discretion, upon issuance of any certificate, attach such terms and conditions as in its judgment may be required. *Walter v. Board of Railroad Commrs.*, 153 M 384, 457 P 2d 479.

8-119. (3847.19) Penalties for violations. Any motor carrier, subject to the provisions of this act, or, whenever any such motor carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation, or any person, corporation, association, or partnership, or officer, agent or employee thereof, or any broker of property or officer, agent or employee thereof, who violates or fails to comply with or who procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe, or comply with any lawful order, decision, rule or regulation, direction, demand, or requirement of the board, or any part of provisions thereof, shall:

(a) be subject to a civil penalty to be collected and deposited to the general fund by the board after notice and hearing in an amount not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for the first offense, and not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense; or

(b) be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for the first offense, and not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 19, Ch. 184, L. 1931; amd. Sec. 2, Ch. 204, L. 1963; amd. Sec. 1, Ch. 209, L. 1967; amd. Sec. 1, Ch. 68, L. 1971.

Amendments

The 1971 amendment inserted subdivi-

sion (a); designated the language in the latter part of the former section as subdivision (b); and inserted "for the first offense, and not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense" in subdivision (b).

8-126. (3847.26) Fees required for filing various documents. The board of railroad commissioners and the public service commission of Montana shall, except as otherwise provided by law, require and receive fees before filing any annual reports, tariffs, schedules and supplements thereof and shall require and receive fees for all copies of orders, documents, classifications, blank forms and other instruments prepared by it

or on file in the office thereof, except as otherwise provided by law to be furnished free of charge, in accordance with the following schedule:

Filing annual reports, each	\$ 5.00
Filing tariffs, time schedules and supplements thereto, each	2.00
For issuing certificates of public convenience and necessity to motor carriers, each	2.00
Classification for public utilities, each	1.50
Classification for motor carriers, each50
For copy of rules and regulations for motor carriers and blank forms of annual reports for utilities and common carriers	Cost

Nothing herein contained shall be construed to require or authorize the board of railroad commissioners or the public service commission to collect fees for the filing of any annual reports, tariffs, schedules and supplements thereof which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935;
amd. Sec. 1, Ch. 73, L. 1947; amd. Sec.
1, Ch. 67, L. 1971.

Amendments

The 1971 amendment changed the fee
for a copy of rules and regulations for
motor carriers from 25 cents to cost.

8-127. (3847.27) Additional fees covering motor carriers. In addition to all other licenses, fees and taxes imposed upon motor vehicles in this state and in consideration of the use of the highways of this state, every motor carrier holding a certificate of public convenience and necessity or permit issued by the board of railroad commissioners, shall between the first and fifteenth days of January, April, July and October of each year, file with the board of railroad commissioners a statement showing the gross operating revenue of such carrier for the preceding three (3) months of operation, or portion thereof, and shall pay to the board a fee of five hundred seventy-five thousandths (.575) of one (1) per cent of the amount of such gross operating revenue; and such tax shall be effective for the taxable year commencing April 1, 1969, and also for each taxable year thereafter; and in the event that such carrier operates in interstate commerce, the gross operating revenue of such carrier within this state shall be deemed to be all the revenue received from business beginning and ending within this state, and a proportion based upon the proportion of the mileage within this state to the entire mileage over which the business is done of revenue on all business passing through, into or out of this state; provided, however, that the minimum fee which shall be paid by each class A and class B carrier for each vehicle registered and/or operated under the provisions of the Motor Carrier Act shall be thirty dollars (\$30) and the minimum annual fee which shall be paid by each class C carrier for each vehicle registered and/or operated under the Motor Carrier Act shall be fifteen dollars (\$15); provided, however, that the minimum annual fee provided by this section shall not apply to either new or used vehicles operated under their own power where such vehicle is being delivered to a dealer and will only be transported once.

History: En. Sec. 2, Ch. 100, L. 1935; Ch. 162, L. 1951; amd. Sec. 1, Ch. 6, Ex.
amd. Sec. 2, Ch. 73, L. 1947; amd. Sec. 1, L. 1969; amd. Sec. 1, Ch. 322, L. 1971.

Amendments

The 1969 amendment inserted a proviso increasing the fee from .5% to .575% for the biennium commencing April 1, 1969.

The 1971 amendment made the increase to .575% permanent and made minor changes in style.

Repealing Clause

Section 2 of Ch. 6, Ex. Laws 1969 read "Section 8-128, R. C. M. 1947, is repealed."

Effective Date

Section 3 of Ch. 6, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Section 2 of Ch. 383, Laws 1971 read "This act is effective on April 1, 1971."

8-128. (3847.28) Repealed.**Repeal**

Section 8-128 (Sec. 3, Ch. 100, L. 1935), relating to the disposition of fees collected

from motor carriers, was repealed by Sec. 2, Ch. 6, Ex. Laws 1969.

8-130. (3847.29) Repealed.**Repeal**

Section 8-130 (Sec. 2, Ch. 133, L. 1943), granting the board authority to grant tem-

porary certificates, was repealed by Sec. 2, Ch. 148, Laws 1971.

8-131. Temporary authority for service—duration—extension. To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the board of railroad commissioners may, in its discretion, upon affidavits or such other evidence as it may deem sufficient, and without hearings or other proceedings, grant temporary authority for such service by a common carrier by motor vehicle or a contract carrier by motor vehicle, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the board shall specify, but for not more than ninety (90) days. Temporary authority initially granted pursuant to the provisions hereof may be extended by the board without hearings or other proceedings, but in no case shall a grant of temporary authority, with extensions, exceed an aggregate of one hundred twenty (120) days. Neither the granting of temporary authority nor operation thereunder shall create any presumption that corresponding permanent authority will be granted thereafter. Transportation service rendered under such temporary authority shall be subject to all applicable provisions of the Motor Carrier Act and to the rules, regulations and requirements of the board thereunder.

History: En. Sec. 1, Ch. 148, L. 1971.

thereof; and repealing section 8-130 of the Revised Codes of Montana, 1947.

Title of Act

An act authorizing the board of railroad commissioners of the state of Montana to grant temporary motor carrier authority in cases of immediate and urgent need; prescribing the maximum periods

Repealing Clause

Section 2 of Ch. 148, Laws 1971 read "Section 8-130, R.C.M., 1947, is hereby repealed."

TITLE 10—CHILDREN AND CHILD WELFARE

Chapter

3. Apprenticing of minors, 10-307.
5. Dependent and neglected children—proceedings for protection, 10-524, 10-525.
6. Juvenile courts and proceedings against juvenile delinquents, 10-602, 10-603, 10-604.1, 10-605.1, 10-607, 10-608.1, 10-610, 10-611, 10-613, 10-622, 10-623, 10-625, 10-626, 10-628, 10-630.
11. District youth guidance homes, 10-1101 to 10-1111.

CHAPTER 3—APPRENTICING OF MINORS

Section

- 10-307. Other conditions of indenture.

10-307. (5896) Other conditions of indenture. Every indenture shall also contain an agreement, on the part of the person to whom such child shall be bound, that he will cause such child to attend school under the compulsory attendance provisions of Title 75, R.C.M., 1947.

History: En. Sec. 366, Civ. C. 1895; re-en. Sec. 3801, Rev. C. 1907; re-en. Sec. 5896, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1971.

Amendments

The 1971 amendment substituted "attend school under the compulsory attend-

ance provisions of Title 75, R.C.M., 1947" for "be instructed to read and write, and to be taught the general rules of arithmetic, or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture" at the end of the section; and made a minor change in phraseology.

CHAPTER 5—DEPENDENT AND NEGLECTED CHILDREN—PROCEEDINGS FOR PROTECTION

Section

- 10-524. Payment for board, clothing, personal needs, and room of dependent and neglected children—reimbursement by county.
- 10-525. Recovery from parents—division between state and county.

10-524. Payment for board, clothing, personal needs, and room of dependent and neglected children—reimbursement by county. Whenever agreements are entered into by the department of public welfare for placing dependent and neglected children in approved family foster homes or licensed private institutions, it shall be the duty of the state department to pay by its check or draft, each month, from any funds appropriated for that purpose, the entire amount agreed upon for board, clothing, personal needs, and room of such children.

On or before the twentieth of each month the state department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the state department with[in] twenty days after such claim is presented.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965; amd. Sec. 1, Ch. 264, L. 1971.

Amendments

The 1971 amendment inserted "clothing, personal needs" near the end of the first paragraph.

10-525. Recovery from parents—division between state and county.

In the event any recovery is made from the parent or parents of children for whom board, clothing, personal needs and room has been paid by the state and county any amount so recovered shall be divided equally between the state department and the county of residence of such child or children.

History: En. Sec. 2, Ch. 48, L. 1949; amd. Sec. 1, Ch. 264, L. 1971.

Amendments

The 1971 amendment inserted "clothing, personal needs."

CHAPTER 6—JUVENILE COURTS AND PROCEEDINGS AGAINST JUVENILE DELINQUENTS

Section

10-602. Definitions.

10-603. Jurisdiction.

10-604.1. Right to jury trial—drawing the jury.

10-605.1. Preliminary inquiry—disposition—petition.

10-607. Service of citation.

10-608.1. Taking child into custody—release—holding child until hearing—notification of apprehension.

10-610. Transfer from other courts.

10-611. Hearing—judgment.

10-613. Modification of judgment.

10-622. Probation officers—appointments—removal—salaries.

10-623. Duties and powers of the probation department.

10-625. Physical and mental examinations and treatment.

10-626. Place of detention.

10-628. Juvenile court committee.

10-630. Appeals.

10-602. Definitions. (1). * * * [Same as parent volume.]

(2) The words "delinquent child" include:

(a) * * * [Same as parent volume.]

(b) A child who has violated any law of the state.

(c) to (e). * * * [Same as parent volume.]

(f) A child who unlawfully, negligently, dangerously, or willfully operates a motor vehicle on the highways of the state or on the roads and streets of any county or city so as to endanger life or property, and a child who operates a motor vehicle on such highways, roads or streets while intoxicated or under the influence of intoxicating liquor, or any other driving infractions that show the child to be lacking parental supervision or a disrespect for the traffic laws of this state.

History: En. Sec. 2, Ch. 227, L. 1943; amd. Sec. 1, Ch. 276, L. 1947; amd. Sec. 1, Ch. 24, L. 1963; amd. Sec. 1, Ch. 262, L. 1969.

Amendments

The 1969 amendment, in subdivision (2) (b), deleted a proviso stating that a child over sixteen should be prosecuted as an adult for commission or attempted commission of enumerated felonies; and in subdivision (2) (f), added "or any other driving infractions * * * of this state."

Involuntary Manslaughter

Conviction of involuntary manslaughter, arising from driving of automobile on public highway while intoxicated, was proper notwithstanding defendant's contention that since he was a juvenile and "delinquent child" within meaning of Juvenile Code, he could be punished only civilly for his acts and not criminally. *State v. Medicine Bull*, 152 M 34, 445 P 2d 916.

10-603. Jurisdiction. The district courts of the several counties of this state shall have jurisdiction in all cases coming within the terms and pro-

visions of this act. It is provided that the district court shall be called the juvenile court when acting under the juvenile court laws.

The juvenile court shall have exclusive original jurisdiction in proceedings:

(a) concerning any child who is delinquent;

(b) concerning any person under twenty-one (21) years of age charged with having violated any law of the state or ordinance of any city or town prior to having become eighteen (18) years of age.

In traffic matters involving persons under twenty-one (21) years of age justice of the peace and police courts or such other courts as are designated by the legislature shall have concurrent jurisdiction as provided in section 32-21-163, R. C. M. 1947:

(c) when the juvenile court has jurisdiction of any child sixteen (16) years of age, or over, who is accused of committing or the attempt to commit murder, manslaughter, arson in the first or second degree, assault in the first or second degree, robbery, burglary, and carrying a deadly weapon with intent to assault, or who commits rape under the circumstances specified in subdivisions 3 and 4 of section 94-4101, R. C. M. 1947, then the county attorney may request the juvenile court to be permitted to file an information against the juvenile in district court, or, when the facts warrant, the juvenile judge may order the county attorney to proceed against the juvenile in district court on an information.

Before making such order the juvenile judge must hear the matter by an informal preliminary hearing to determine first, if there is probable cause to believe the juvenile has committed the felony, and, second, to determine whether under the circumstances it appears necessary for the best interest of the state that the juvenile be held to answer the information in district court.

After the information is filed in district court that court shall have full jurisdiction to proceed against the juvenile and shall proceed against him in the same manner as if he were an adult.

If the juvenile is found guilty in district court and is sentenced to the state prison, his commitment shall be to the department of institutions to be by them confined in whatever institution to them seems most proper;

(d) when jurisdiction shall have been obtained by the juvenile court in the case of any child, such jurisdiction shall continue until the child becomes twenty-one (21) years of age unless the child is ordered committed to a state custodial or correctional institution or to the state department of institutions;

(e) the county where a child is a resident shall have primary jurisdiction over any child charged with being a juvenile delinquent and the juvenile court of that county shall assume the handling of the cause. In the case of a juvenile sixteen (16) years of age or over who is accused of one of the serious offenses listed in subsection (c) of this section, the juvenile courts in the county where the offense occurred shall serve as the preliminary hearing court and if the juvenile is to be tried in district court the charge shall be filed and the trial held in the district court of the county where the offense occurred, otherwise the matter shall be transferred to the county where the child is a resident.

History: En. Sec. 3, Ch. 227, L. 1943; amd. Sec. 1, Ch. 123, L. 1945; amd. Sec. 2, Ch. 276, L. 1947; amd. Sec. 1, Ch. 124, L. 1957; amd. Sec. 2, Ch. 262, L. 1969.

Amendments

The 1969 amendment deleted "other than those laws relating to the commission of or attempt to commit the criminal offenses mentioned in subdivision (2) (b) of section 10-602" after "state" and made

other minor changes in phraseology in subdivision (b); deleted provisions of subdivision (c) as follows: "concerning parents who willfully and knowingly fail to provide their children with proper food, clothing, medical attention, and opportunity to attend school; deleted a provision relating to right to trial by jury, and added the provisions of subdivisions (c) to (e), inclusive.

10-604. Repealed.

Repeal

Section 10-604 (Sec. 1, Ch. 41, L. 1945) relating to the trial of juvenile cases by a

special jury was repealed by Sec. 16, Ch. 262, Laws 1969.

10-604.1. Right to jury trial—drawing the jury. The juvenile in any case to be heard on a written petition charging delinquency shall have the right to demand a jury trial and shall have the right to be represented by counsel. The rights are deemed waived if not exercised. When a jury trial is required in a juvenile case, it may be held before the regular trial panel. However, if the regular panel is not in attendance, the court may draw a jury from jury box No. 3. Jury trials demanded in juvenile courts shall be granted as soon as possible.

History: En. Sec. 3, Ch. 262, L. 1969.

Title of Act

An act to generally revise the Montana Juvenile Code Title 10, chapter 6 by redefining delinquent child; placing the jurisdiction of persons under eighteen charged with violating any laws of the state or city ordinance with the juvenile court; allowing the county attorney under direction of the juvenile judge to file an information against a child sixteen or over who has committed murder, rape, arson,

manslaughter, robbery or burglary; deleting reference to separate facilities used for juveniles confined in the state prison; giving the district court judge discretionary power to appoint committees to assist him in juvenile matters; amending sections 10-602, 10-603, 10-607, 10-610, 10-622, 10-623, 10-625, 10-626, 10-628, 10-630, and 80-2204, R. C. M. 1947; and repealing sections 75-3001, 75-3002, 10-604, 10-605, 10-609, 10-618, 10-619, 10-620, and 10-632, R. C. M. 1947.

10-605. Repealed.

Repeal

Section 10-605 (Sec. 4, Ch. 227, L. 1943) relating to the requirements of a petition,

was repealed by Sec. 16, Ch. 262, Laws 1969.

10-605.1. Preliminary inquiry—disposition—petition. (1) Whenever any person informs the court that a child is a delinquent as defined in this act the court shall cause, by citation or otherwise, the child to be brought before the court or the juvenile probation officer for the purpose of making a preliminary inquiry to determine whether the interests of the child or the public require that further action be taken. The matter may be handled by an informal adjustment including the placing of the child on probation, or the court may order the county attorney to file a petition charging the child with being a juvenile delinquent.

(2) If a petition is filed the proceeding shall be entitled, "In the matter of _____, a child under eighteen (18) years of age." Any record made on any juvenile matter shall not be open to public examination without order of the court.

(3) The petition shall be prepared and signed by the county attorney and shall contain a brief recitation of the facts which bring the child

within the provisions of this act, and, shall include such information as to parents, residence and other matters as will properly inform the court on the matter.

History: En. Sec. 4, Ch. 262, L. 1969;
amd. Sec. 1, Ch. 195, L. 1971.

Amendments

The 1971 amendment inserted "information as to parents" in the latter portion of subsection (3).

10-607. Service of citation. (1) Written petition. Service of citation shall be made personally by the delivery of copies thereof to the person cited; provided that if the judge is satisfied that it is impracticable to serve personally such citation or the notice provided in the preceding section, he may order service by registered mail to their last known address, or by the publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if service is effected at least twenty-four hours before the time fixed in the citation for the return thereof.

Service of citation, process or notice required by this act may be made by any suitable person under the direction of the court.

(2) Citation for an informal hearing may order the child brought before the court immediately or at any time set by the court. The citation may command the child be brought before the court immediately in which case it must be directed to a peace officer and must be handled like a warrant of arrest.

History: En. Sec. 6, Ch. 227, L. 1943;
amd. Sec. 5, Ch. 262, L. 1969.

first paragraph as subsection (1) and inserted "Written petition"; deleted a former third paragraph which provided for reimbursement of probation officers; and added subsection (2).

Amendments

The 1969 amendment designated the

10-608.1. Taking child into custody—release—holding child until hearing—notification of apprehension. (1) Whenever any peace officer believes, on reasonable grounds, that any child is violating any law or ordinance or engaging in other conduct that would be grounds for finding the child a delinquent, or when the surroundings are such as to endanger his health, morals, or welfare unless immediate action is taken, then the peace officer shall take the child into custody in the same manner as for the arrest of an adult.

(2) Whenever the peace officer believes, on reasonable grounds, that the child can be released to a parent, guardian or other person who has had custody of the child, then the peace officer may release the child to that person or persons upon receiving a written promise from him or them to bring the child before the juvenile court or the juvenile probation officer at a time and place specified in the written promise.

(3) Whenever the peace officer believes, on reasonable grounds, that the child must be held in custody until his appearance in juvenile court, then the peace officer must deliver the child to the juvenile court or probation officer without undue delay. If it is necessary to hold the child pending appearance before the juvenile court then the child must be held in some place that has been approved by the juvenile court and completely separated from adult offenders.

(4) Whenever any peace officer has apprehended a child as hereinabove provided, he shall, as soon as practicable, notify the juvenile court

or probation officer of such fact with a report of his reasons for the apprehension.

History: En. Sec. 6, Ch. 262, L. 1969.

10-609. Repealed.

Repeal

Section 10-609 (Sec. 8, Ch. 227, L. 1943; Sec. 3, Ch. 276, L. 1947), relating to the

release of children taken into custody, was repealed by Sec. 16, Ch. 262, Laws 1969.

10-610. Transfer from other courts. If, during the pendency of a criminal or quasi-criminal proceeding against any person in any other court, it shall be ascertained that said person was at the time of committing the alleged offense within the definition of "delinquent child" as set out in section 10-602, R. C. M. 1947, it shall be the duty of such court to transfer such case immediately, together with all papers, documents, and testimony connected therewith, to the juvenile court. The court making the transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile court or to that court itself, or release such child in the custody of some suitable person, to appear before the juvenile court at a time designated. The juvenile court shall thereupon proceed to hear and dispose of such case in the same manner as if it had been instituted in that court in the first instance.

History: En. Sec. 9, Ch. 227, L. 1943; amd. Sec. 4, Ch. 276, L. 1947; amd. Sec. 7, Ch. 262, L. 1969.

tence, substituted "proceeding" for "charge"; and substituted reference to section 10-602 generally for reference to subdivision (2) (b) of that section.

Amendments

The 1969 amendment, in the first sen-

10-611. Hearing—judgment. The court may conduct the hearing in an informal manner and may adjourn the hearing from time to time. In the hearing of any juvenile case, as distinguished from a case involving a child charged with the commission of or attempt to commit any of the criminal offenses set out in subdivision (2) (b) of section 10-602, the general public shall be excluded and only such persons admitted as have a direct interest in the case; provided, however, that whenever the hearing in the juvenile court is had on a written petition charging the commission of any felony, persons having a legitimate interest in the proceeding, including responsible representatives of public information media, shall not be excluded from such hearing. All cases involving children shall be heard separately and apart from the trial of cases against adults.

If the court shall find that the child is delinquent within the provisions of this act, it may by order duly entered proceed as follows:

(1) and (2). * * * [Same as parent volume.]

(3) In the case of such child of the age of sixteen (16) years or older who the court feels would be a suitable person for placement at a youth forest camp, the court should notify the director of the department of institutions of such finding and the director of the department of institutions should designate to the court the juvenile facility to which the child should be delivered for evaluation. The court may then commit such child to the department of institutions for not to exceed thirty (30) days for

the purpose of evaluation as to such child's suitability for such placement, and order the child delivered for evaluation to the juvenile facility designated by the director. If after such evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at such camp, the court may then commit such child directly to the youth forest camp under the terms and conditions of the commitment provided for in this act. If, however, the department of institutions reports to the court that such child is not suitable for placement in such camp, stating the reasons therefor, he shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this act. The costs of transporting such child to the designated juvenile facility for evaluation and the cost of returning such child to the court, should that become necessary, shall be borne by the county of such child's residence.

(4) Order such further care and treatment as the court may deem best for the best interests of the child, except as herein otherwise provided.

No commitment of any such delinquent child to any institution under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any delinquent child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any delinquent child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of any crime in any court except as provided in the preceding section of this act. The disposition of the delinquent child or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding.

Whenever the court shall commit a delinquent child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning such child.

Whenever a child or an adult under the age of twenty-one (21) years is convicted of a felony or felonies or attempt to commit a felony or felonies and is sentenced to imprisonment in the state prison, he shall, throughout the term of imprisonment or until such time as he reaches the age of twenty-one (21) years, have sleeping quarters separate and apart from inmates who are over the age of twenty-one (21) years, and additionally shall be kept separate and apart at other times in those areas where staff and facilities will permit.

History: En. Sec. 10, Ch. 227, L. 1943; amd. Sec. 5, Ch. 276, L. 1947; amd. Sec. 1, Ch. 132, L. 1961; amd. Sec. 2, Ch. 134, L. 1967; amd. Sec. 1, Ch. 227, L. 1969; amd. Sec. 1, Ch. 368, L. 1971.

Compiler's Notes

Subdivision (2) (b) of section 10-602, referred to in the first paragraph, has been amended, deleting the provision concerning attempts or completion of enumerated felonies. For new law, see sec. 10-603.

Amendments

The 1969 amendment deleted the re-

quirement in the last paragraph that inmate under twenty-one be separated at all times from those over twenty-one and substituted the present provision for separate sleeping quarters and separation at other times where staff and facilities permit.

The 1971 amendment inserted subdivision (3) and redesignated former subdivision (3) as subdivision (4).

Effective Dates

Section 2 of Ch. 227, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 5, 1969.

Section 2 of Ch. 368, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Cross-References

Commitment of child to reception and evaluation center, sec. 80-1704.

10-613. Modification of judgment. Any order of the court may be modified at any time, except an order committing a child to the custody of a state custodial or correctional institution, or to the department of institutions.

History: En. Sec. 12, Ch. 227, L. 1943; amd. Sec. 2, Ch. 123, L. 1945; amd. Sec. 8, Ch. 262, L. 1969.

mentioned in the Title of Ch. 262, Laws 1969.

Amendments

The 1969 amendment added "or to the department of institutions."

Compiler's Notes

The amendment of this section was not

10-618 to 10-620. Repealed.

Repeal

Sections 10-618 to 10-620 (Secs. 17 to 19, Ch. 227, L. 1943; Sec. 8, Ch. 276, L. 1947), relating to the suspension of sen-

tence and posting of bond or undertaking in juvenile cases, were repealed by Sec. 16, Ch. 262, Laws 1969.

10-622. Probation officers—appointments—removal—salaries. In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one (1) discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office until removed by the court. Preference in appointment shall be given to any person who possesses the following qualifications:

(1) a bachelor's degree from an accredited college or university in the behavioral sciences, or

(2) a bachelor's degree from an accredited college or university in some subject other than the behavioral sciences, and three (3) years of experience in work of a nature related to the duties of the probation department as set forth in section 10-623.

Such officer shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed ten thousand two hundred dollars (\$10,200), or on a per diem basis at the rate of forty dollars (\$40) per day for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the assessed valuation of such counties for the year then current, except that where such official is appointed for one (1) county, his salary shall be paid by that county.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of children, the probation officer shall, in addition to his official salary, be reimbursed for actual expenses incurred.

History: En. Sec. 21, Ch. 227, L. 1943; amd. Sec. 1, Ch. 116, L. 1947; amd. Sec. 1, Ch. 27, L. 1951; amd. Sec. 1, Ch. 112, L. 1953; amd. Sec. 1, Ch. 36, L. 1955; amd. Sec. 1, Ch. 177, L. 1957; amd. Sec. 1, Ch. 166, L. 1961; amd. Sec. 1, Ch. 115, L. 1963; amd. Sec. 1, Ch. 94, L. 1965; amd. Sec. 1, Ch. 7, L. 1967; amd. Sec. 9, Ch. 262, L. 1969; amd. Sec. 1, Ch. 318, L. 1971; amd. Sec. 1, Ch. 428, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 318 and once by Ch. 428. Chapter 318 was approved by the governor on March 15, 1971, and Ch. 428 on March 18, 1971. Chapter 428 incorporated the changes made by Ch. 318. Therefore, the compiler has used the text of Ch. 428 above.

Amendments

The 1969 amendment added the final paragraph.

Chapter 318, Laws of 1971, increased the yearly salary from \$9,000 to \$10,200; fixed the per diem rate at \$40 per day; and made minor changes in style.

Chapter 428, Laws of 1971, included the changes made by Ch. 318; added the second sentence, including the numbered subdivisions, to the end of the present first paragraph; inserted "giving preference to persons having the qualifications suggested for appointment as the chief probation officer" in the third paragraph; and made a minor change in phraseology.

Repealing Clause

Section 2 of Ch. 318, Laws 1971 repealed all acts and parts of acts in conflict therewith.

10-623. Duties and powers of the probation department. The chief probation officer, under the direction of the judge, shall have charge of the work of the probation department. The probation department shall make such investigation as the juvenile court may direct, keep a written record of such investigations and submit the same to the judge, or deal with the same as the judge may direct. The department shall furnish to any delinquent child placed on probation or to any parent or guardian of such child a written statement of the conditions of probation, and shall keep informed concerning the conduct and condition of each person under its supervision, and shall report thereon to the judge as he may direct. Each probation officer shall use all suitable methods to aid persons on probation and bring about improvement in their conduct and condition. The probation department shall keep full records of its work, and shall keep accurate and complete accounts of money collected from persons under its supervision, and shall give receipts therefor and shall make reports thereupon as the judge may direct. Probation officers, for the purpose of this act, shall have the powers of police officers.

All information obtained in discharge of official duty by any officer or other employee of the juvenile court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this act to receive such information, unless and until otherwise ordered by the judge.

History: En. Sec. 22, Ch. 227, L. 1943; amd. Sec. 9, Ch. 276, L. 1947; amd. Sec. 10, Ch. 262, L. 1969.

Amendments

The 1969 amendment, in the third sen-

tence, deleted "or to any person within the purview of sections 10-617 and 10-618" before "placed on probation"; and inserted, after that phrase, "or to any parent or guardian of such child."

10-625. Physical and mental examinations and treatment. The court may cause any person coming under its jurisdiction to be examined by a physician, psychiatrist, [or] psychologist, appointed by the court.

Whenever a child, concerning whom a petition has been filed, appears to be in need of medical or surgical care, the court may order the parent, guardian or custodian to provide treatment for such child in a hospital or otherwise. If such parent, guardian, or custodian fails to provide such treatment, the court may, after due notice, enter an order therefor, and expense thereof, when approved by the court, shall be a charge upon the county; but the court may adjudge that the person or persons having the duty under the law to support such child pay part or all of the expenses of such treatment.

History: En. Sec. 24, Ch. 227, L. 1943;
amd. Sec. 11, Ch. 262, L. 1969.

Compiler's Notes

The bracketed word "or" in the first paragraph was inserted by the compiler.

Amendments

The 1969 amendment deleted "in the manner provided in a preceding section of this act" from the end of the section.

10-626. Place of detention. Whenever it is necessary for any peace officer to detain any child under eighteen (18) years of age, or, whenever by order of the court or the chief probation officer it is necessary to detain any such child, then such child shall be detained in a room or ward which has been approved by the juvenile court judge. Such room or ward must assure that children are kept separated by sex and that they are not permitted to associate in any way with adults who are also being confined in the same building or area.

History: En. Sec. 25, Ch. 227, L. 1943;
amd. Sec. 10, Ch. 276, L. 1947; amd. Sec.
12, Ch. 262, L. 1969.

Amendments

The 1969 amendment rewrote this section which formerly prohibited placing children under 18 in any prison, jail or lockup unless the child was a menace to

other persons, provided that a child over 16 charged with commission or attempt of felony formerly enumerated in section 10-602 or an adult under 21 charged with felony could be placed in jail in a room or ward separate from adults and stated that provision should be made temporary detention, boarding or care of children not charged with enumerated felony.

10-628. Juvenile court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three (3) nor more than seven (7) reputable citizens, which committee shall be designated as a juvenile court committee; this committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the juvenile department of the court, and shall act as a supervisory committee of detention homes, and in the selection of foster homes.

History: En. Sec. 27, Ch. 227, L. 1943;
amd. Sec. 1, Ch. 128, L. 1957; amd. Sec.
13, Ch. 262, L. 1969.

Amendments

The 1969 amendment substituted "may" for "must" before "appoint a committee."

10-630. Appeals. In the case of a delinquent child an appeal to the supreme court may be taken by the child or an aggrieved party in the manner provided by law or by rule of court for appeal in civil cases. In any case charging an adult with contributing to the delinquency of a child,

an appeal may be taken to the supreme court in the manner provided by law or by rule of court for appeal in criminal cases. In any other case against an adult coming under this act an appeal may be taken to the supreme court in the manner provided by law or by rule of court for appeal in civil cases. An appeal, in the case of a delinquent child, shall not suspend the order of the court, nor shall it discharge the delinquent child from the custody of that court or of the person, institution or agency to whose care such delinquent child shall have been committed unless that court shall so order.

On appeal the supreme court shall review the matter and may make such order as appears proper, including any necessary modification of the district court order.

History: En. Sec. 29, Ch. 227, L. 1943; amd. Sec. 11, Ch. 276, L. 1947; amd. Sec. 14, Ch. 262, L. 1969.

Amendments

The 1969 amendment substituted "child or an aggrieved party" for "party aggrieved" in the first sentence; and sub-

stituted the second paragraph for former fifth sentence which provided that court, if it did not dismiss proceeding, should affirm or modify the order and remand child to jurisdiction of the district court which should retain jurisdiction just as if no appeal had been taken.

10-632. Repealed.

Repeal

Section 10-632 (Sec. 33, Ch. 227, L. 1943; Sec. 84, Ch. 199, L. 1965), relating to the

effect of the juvenile court law on the institutional and welfare laws, was repealed by Sec. 16, Ch. 262, Laws 1969.

CHAPTER 8—DAY CARE FACILITIES FOR CHILDREN

10-803. Standards for child care.

Cross-References

Advisory council abolished, sec. 82A-1908(1).

CHAPTER 11—DISTRICT YOUTH GUIDANCE HOMES

Section

- 10-1101. Establishment of district youth guidance home program.
- 10-1102. Definitions.
- 10-1103. Nonprofit corporations to establish homes authorized—power to receive facilities and funds.
- 10-1104. Governmental aid to nonprofit organizations.
- 10-1105. Authority of district judge to commit juvenile delinquents.
- 10-1106. Petition by person under 21 to be placed in district youth guidance home.
- 10-1107. Continuing jurisdiction of district court over juvenile.
- 10-1108. Per diem charge to financially able parents.
- 10-1109. Placement of juveniles by department of institutions.
- 10-1110. Rules and regulations.
- 10-1111. Federal assistance.

10-1101. Establishment of district youth guidance home program.

The legislative assembly, in recognition of the wide and varied needs of juvenile delinquents and juveniles tending toward delinquency of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in existing state institutions, establishes by this act a district youth guidance home program to provide facilities and services for the rehabilita-

tion of juvenile delinquents and juveniles tending toward delinquency and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions.

History: En. Sec. 1, Ch. 427, L. 1971.

Title of Act

An act providing for nonprofit organizations to establish district youth guidance homes for delinquent and other

children; providing for committal of juvenile delinquents and other juveniles to district youth guidance homes; providing authority to department of institutions to make rules and regulations for the operation of such homes.

10-1102. Definitions. Definitions:

(a) Juvenile delinquent. A delinquent child is defined in section 10-602, R.C.M. 1947.

(b) A juvenile tending toward delinquency. Any person under the age of twenty-one (21) years over whom the juvenile court may have jurisdiction under section 10-603, R.C.M. 1947, and who a district court judge may find to have committed any of the acts of a delinquent child as defined by section 10-602, R.C.M. 1947, but whom in the court's discretion has not yet become a delinquent child as therein defined.

(c) District youth guidance home. A district youth guidance home is a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state institutions, the function of which is to provide a home and guidance through adult supervision for juvenile delinquents and juveniles tending toward delinquency.

History: En. Sec. 2, Ch. 427, L. 1971.

10-1103. Nonprofit corporations to establish homes authorized—power to receive facilities and funds. Nonprofit corporations or associations in any judicial district may be formed or organized for the purpose of establishing under this act district youth guidance homes and to receive from the department of institutions and other governmental units such services, facilities and funds as the department or other governmental units may be authorized to provide by law.

History: En. Sec. 3, Ch. 427, L. 1971.

10-1104. Governmental aid to nonprofit organizations. (1) The department of institutions shall be authorized to contract with nonprofit corporations or associations, to provide facilities and services for juvenile delinquents and juveniles tending toward delinquency in district youth guidance homes, and is authorized to expend such moneys as shall be appropriated or available therefor.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are hereby authorized, at their own expense, to provide funds, materials, facilities and services for district youth guidance homes.

History: En. Sec. 4, Ch. 427, L. 1971.

10-1105. Authority of district judge to commit juvenile delinquents. A district judge is hereby authorized in his discretion to place a juvenile delinquent or juvenile tending toward delinquency to said district youth guidance home for any period of time up to the child's twenty-first birth-

day subject to the approval of its sponsoring nonprofit corporation or association.

History: En. Sec. 5, Ch. 427, L. 1971.

10-1106. Petition by person under 21 to be placed in district youth guidance home. Any person under the age of twenty-one (21) years may petition the district court of a district in which a district youth guidance home has been established to be placed to a district youth guidance home for any period of time up to said person's twenty-first birthday.

History: En. Sec. 6, Ch. 427, L. 1971.

10-1107. Continuing jurisdiction of district court over juvenile. The district court placing a juvenile or juvenile tending toward delinquency to a district youth guidance home shall retain continuing jurisdiction over said juvenile until said juvenile becomes twenty-one (21) years of age or is otherwise discharged by order of the court.

History: En. Sec. 7, Ch. 427, L. 1971.

10-1108. Per diem charge to financially able parents. A district judge placing a juvenile delinquent or a juvenile tending toward delinquency to a district youth guidance home may, if the parent or parents of the juvenile are financially able, without undue hardship, require the parents or parent to pay to the district youth guidance home a per diem charge not to exceed the per diem charge established by the department of institutions for each child placed to the Montana children's center.

History: En. Sec. 8, Ch. 427, L. 1971.

10-1109. Placement of juveniles by department of institutions. The department of institutions is hereby authorized as part of its aftercare program to place a juvenile delinquent in a district youth guidance home subject to the approval of its sponsoring nonprofit corporation or association.

History: En. Sec. 9, Ch. 427, L. 1971.

10-1110. Rules and regulations. The director of the department of institutions shall have power to adopt reasonable rules, regulations and standards to carry out the administration and purposes of this act.

History: En. Sec. 10, Ch. 427, L. 1971.

10-1111. Federal assistance. The department of institutions is hereby authorized to make application for and to receive federal-aid money or other assistance which might now or hereafter become available for programs in the nature of the one created by this act.

History: En. Sec. 11, Ch. 427, L. 1971.

Separability Clause

Section 12 of Ch. 427, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable

from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

TITLE 11—CITIES AND TOWNS

Chapter

2. Classification and organization of cities and towns, 11-201.
6. Plats of cities and towns and additions thereto, 11-602, 11-614, 11-614.2.
7. Officers and elections, 11-709, 11-721.1, 11-725.
9. Powers of city and town councils, 11-951, 11-964.1, 11-964.2, 11-982.
10. Powers of city and town councils (continued), 11-1001, 11-1024.
11. Ordinances—initiative and referendum, 11-1102.
12. Contracts and franchises, 11-1202, 11-1202.1.
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CHAPTER 2—CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS

Section

- 11-201. Cities and towns classified.

11-201. (4959) Cities and towns classified. Every city having a population of ten thousand or more is a city of the first class; every city having a population of less than ten thousand and more than five thousand is a city of the second class; every city having a population of less than five thousand and more than one thousand is a city of the third class; and every municipal corporation having a population of three hundred and less than one thousand is a town; provided, that every municipal corporation having a population of more than five thousand and less than seven thousand five hundred may by resolution adopted by the city council pursuant to sections 11-301 to 11-305 be either a second class city or a third class city; and provided, that every municipal corporation having a population of more than one thousand and less than twenty-five hundred, may by resolution adopted by the city or town council, as the case may be, pursuant to sections 11-301 to 11-305, be either a city or town. Nothing

in this act shall be construed as affecting the status or classification of any existing city or town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R. C. M. 1921; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969.

Amendments

The 1969 amendment inserted the proviso permitting municipal corporations of more than 5,000 and less than 7,500 population to be either a second or third class city.

CHAPTER 4—ADDITIONS OF PLATTED TRACTS TO CITIES AND TOWNS

11-403. (4978) Extension of boundaries to include contiguous, etc.

Constitutionality

This section does not violate article III, section 14 of state constitution nor Amendment 5 of United States constitution which provides that private property may not be taken for public use without payment of just compensation, and does not violate article III, section 27 of state constitution or Amendments 5 and 14 of United States constitution which provide that private property cannot be taken without due process of law. *Brodie v. City of Missoula*, — M —, 468 P 2d 778.

Certificate of Survey

Contention that 30-acre tract was improperly annexed to city due to failure of city council to survey unplatted land and file certificate of survey prior to annexation was without merit since entire tract was surrounded by city and therefore, under this section, no certificate of survey was necessary. *Brodie v. City of Missoula*, — M —, 468 P 2d 778.

Discretion of City Council

Determination of question of whether annexation of tract of realty into city is in best interest of city and inhabitants of such area to be annexed is expressly granted to city council by this section, and exercise of such discretion is subject to judicial review only where council has proceeded contrary to statute or where

they have acted so arbitrarily or capriciously that it may be said they exercised no discretion at all. *Brodie v. City of Missoula*, — M —, 468 P 2d 778.

Incidental Agricultural Use of Land Annexed

Contention that 30-acre tract of land was improperly annexed to city since such land was being used for agricultural purposes and therefore exempt from annexation under this section was without merit since evidence indicated that land was primarily held as developmental parcel for housing development and agricultural use was only incidental thereto. *Brodie v. City of Missoula*, — M —, 468 P 2d 778.

Wholly Surrounded Property

Contention on appeal that city had improperly annexed certain platted lots due to fact that one side of lots was contiguous with outdoor theater and thus such lots were not "wholly surrounded" by city, as required by this section, was without merit since "wholly surrounded," as used in this section, does not mean city property must also be wholly contiguous to such property, rather it means that tract is so located that it is impossible to reach it without crossing city property. *Calvert v. City of Great Falls*, 154 M 213, 462 P 2d 182.

CHAPTER 6—PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

Section

11-602. What plat must contain.

11-614. Small and irregularly shaped tracts must be platted, surveyed and certified before sale.

11-614.2. Instruments transferring tracts acquired for state highways.

11-602. (4981) What plat must contain. The plat must show as follows:

1. to 8. * * * [Same as parent volume.]

9. For the purpose of promoting the public comfort, welfare, and

safety, such plat and survey must show that at least one-ninth of the platted area, exclusive of streets, alleys, avenues, and highways, is forever dedicated to the public for parks and playgrounds; the one-half of such area so dedicated to the public for parks and playgrounds may be distributed in small plots of not less than one block in area through the different parts of the area platted; and the one-half shall be consecrated into larger parks on the outer edge of the area so platted. The board of county commissioners of the county, or the council of the city or town, is hereby authorized to suggest suitable places for such parks and playgrounds, and for good cause shown may make an order in the proceedings of such body (to be endorsed and certified on said plat), diminishing the amount of such area herein required to be dedicated as public parks and playgrounds to not less than one-twelfth thereof, exclusive of streets, alleys, avenues, and highways; provided that where due to the size, topography, shape or location or other circumstances then and there existing, the dedication of land for park and playground purposes would be unsuitable, uneconomical, difficult to develop or maintain, or otherwise unusable for park and playground purposes, the governing body of the county, or the city or town, for good cause shown may make an order in the proceedings of such body to be endorsed and certified on the plat, accepting a cash donation in lieu of land that would have been dedicated if a dedication were made, to be paid into the park fund, which shall be utilized for the purchase of additional land for parks and playgrounds, or for the initial development of parks or playgrounds as the needs of the general public welfare shall determine. The amount of the aforesaid cash donation in lieu of land dedication shall equal the fair market value of the land at the time of subdividing of the amount of land needed to meet the aforementioned park requirements; and provided further that if the proposed plat provides for the planned unit development with land set aside for park and recreational uses sufficient to meet the needs of the persons residing in and who will ultimately reside in said planned unit development, that the governing body may issue an order waiving the land dedication or cash donation requirements and may accept said plat for filing, and provided further that if a tract or tracts of land are being developed by the same ownership as a part of an overall plan, and part of said tract or tracts have been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of this section for the entire tract or tracts being developed, the governing body may issue an order waiving the land dedication or cash donation requirements for any of said portion or portions of said tract or tracts thereafter subdivided.

10. For the purpose of promoting the public comfort, welfare, and safety, the subdivider must obtain the approval of the board of county commissioners or the governing body of any city or town within the limits of which said tracts or plat of land are contained, and it is the duty of said board of county commissioners, or the governing body of said city or town, and they shall adopt regulations to provide for the harmonious development of the region and its environs, for the co-ordination of roads within the subdivided land with other existing or planned roads or with

the state or regional plan, or with the plans of municipalities in or near the region, for adequate open spaces for travel, light, air and recreation; for the conservation of or provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance of population congestion and for the avoidance of scattered subdivision of land as would involve danger or injury to health, safety or welfare by reason of the lack of water supply, drainage, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services; and provided further that such regulations may include requirements as to the extent to which, and the manner in which roads shall be created and improved and water and sewer and other utility mains, piping connections or other facilities to be installed as condition precedent to the approval of a plat. And provided further that in the event that a proposed subdivision or plat fails to meet the requirements of said regulations that approval of the plat shall be denied until such time as it conforms with said regulations.

History: Ap. p. Sec. 1, p. 39, L. 1883; re-en. Sec. 2031, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 226, L. 1889; amd. Sec. 5001, Pol. C. 1895; re-en. Sec. 3466, Rev. C. 1907; amd. Sec. 2, Ch. 119, L. 1917; re-en. Sec. 4981, R. C. M. 1921; amd. Sec. 1, Ch. 19, L. 1971.

Amendments

The 1971 amendment completely rewrote the proviso to the second sentence in paragraph 9, for previous text of which see parent volume; added the third sentence to paragraph 9; and added paragraph 10.

11-614. (4993) Small and irregularly shaped tracts must be platted, surveyed and certified before sale. Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as orchard tracts, vineyard tracts, acreage tracts, suburban tracts, or community tracts, containing less than the United States legal subdivision of ten (10) acres, or who shall subdivide and/or sell or transfer any irregularly shaped tract of land, the acreage of which cannot be determined without a survey, must cause the same to be surveyed, platted, certified, and filed in the office of the county clerk and recorder of the county in which said land lies, according to the provisions of this chapter before any part or portion of the same is sold or transferred; except that it will not be necessary to comply with the provisions of this chapter relating to parks, playgrounds, and state highways, and such state highway sales or transfers may be made by reference to the plat or plan contemplated by section 32-2413, R. C. M. 1947, on file and the numbers of the lots and blocks or parcels. Said plat or plan contemplated by section 32-2413, R. C. M. 1947, shall be of a scale not less than one inch equals four hundred feet and have attached a certified copy of the state highway commission resolution establishing the location or reconstruction of such highway and shall be recorded in the office of the proper county clerk and recorder in a separate book kept for that purpose. The commission shall, at its expense, furnish each county clerk and recorder with an appropriate book which shall be indexed by project number, parcel number, cross-indexed by name of the owner affected. It is unlawful for any further sales to be made without a full compliance with the provisions of this chapter, and the surveying and platting of the whole tract, showing the lots sold before the filing of the plat; provided further that until the filing of such

plat, or survey, the county clerk of any county shall not record any deed which conveyed, or purports to convey, any irregular shaped tract or part of land or parcel of any such platted tract or tracts of less than the United States legal subdivision of ten (10) acres, unless the person presenting such deed for record also delivers to such county clerk for filing a plat or map which has been prepared by a surveyor or civil engineer, which plat or map shall show with particularity the legal description, and area of the land to be conveyed, except that no map or plat shall be required in those cases where the parcel of land being conveyed has been previously conveyed by deed or other instrument recorded ten (10) years or more prior to the passage of this act.

History: En. Sec. 5013, Pol. C. 1895; re-en. Sec. 3478, Rev. C. 1907; amd. Sec. 5, Ch. 119, L. 1917; re-en. Sec. 4993, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1939; amd. Sec. 1, Ch. 180, L. 1945; amd. Sec. 1, Ch. 227, L. 1947; amd. Sec. 1, Ch. 295, L. 1969.

at the end of the first sentence, inserted references to state highways and the plan contemplated by section 32-2413, substituted "may" for "must" before "be made by reference to the plat" and added "or parcels" at the end of the sentence; and inserted the second and third sentences.

Amendments

The 1969 amendment, in the exception

11-614.2 Instruments transferring tracts acquired for state highways.

Instruments of transfer of tracts defined in this section which are acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, R. C. M. 1947, and are excepted from other platting requirements of this act; provided, however, that if such tracts are not shown on highway plans of record, instruments of transfer of such tracts shall be accompanied by appropriate certificates of survey and plats when presented for recording.

History: En. Sec. 2, Ch. 295, L. 1969.

in addition to plats on file plans on file and to include therein in addition to lots and blocks, parcels.

Title of Act

An act relating to the platting, surveying and certification of small and irregularly shaped tracts before sale; amending section 11-614, R. C. M. 1947, to extend the exceptions to said section to include state highways, and to include therein

Effective Date

Section 3 of Ch. 295, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

CHAPTER 7—OFFICERS AND ELECTIONS

Section

11-709. Biennial elections in cities and towns—terms of office.

11-721.1. Recall of elective officers.

11-725. Salaries and qualifications of mayor and alderman.

11-709. (5003) Biennial elections in cities and towns—terms of office.

On the first Tuesday of April of every second year a municipal election must be held, at which the qualified electors of each town or city must elect the officers of the city as defined in section 11-701 whose terms of office will expire, with aldermen to be voted for by the wards they respectively represent; the mayor to hold office for a term of four (4) years, and until the qualification of his successor; and each alderman so elected to hold office for a term of four (4) years, and until the qualification of

his successor; and also in cities of the first, second and third class, a police judge and a city treasurer, who shall hold office for a term of four (4) years, and until the qualification of their successors; provided, however, that in the election to be held the first Tuesday of April, 1973, one alderman from each ward will be elected for a term of two (2) years and one alderman from each ward will be elected for a term of four (4) years, and in the next succeeding election and thereafter, one alderman from each ward will be elected for a four (4) year term. The city council shall by resolution determine which office of alderman in each ward shall be for a term of two (2) years and which for four (4) years at the election to be held on the first Tuesday of April, 1973.

History: Ap. p. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R. C. M. 1921; amd. Sec. 1, Ch. 60, L. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 193 and once by Ch. 343. Neither amendatory act referred to or incorporated the changes made by the other. Chapter 193 was approved on March 3, 1971, and Ch. 343 on March 15, 1971, so that Ch. 343 governs to the extent that they conflict. The only conflict appears to be in the language added by Ch. 193, which referred in two places to the election "to be held on the first Monday of April, 1973." The compiler has therefore made a composite section embodying the changes made by both amendatory acts but substituting "Tuesday" for "Monday" in the language added by Ch. 193.

Amendments

Chapter 193, Laws of 1971, substituted "the officers of the city as defined in section 11-701 whose terms of office will expire, with aldermen" after "must elect" for "a mayor and two aldermen from each ward"; increased all terms of office from two years to four years; substituted the proviso at the end of the first sentence for a proviso relating to 1936 elections; and added the second sentence.

Chapter 343, Laws of 1971, substituted "Tuesday" for "Monday" in the beginning of the first sentence; deleted the proviso relating to 1936 elections at the end of the first sentence; and made a minor change in style.

Effective Date

Section 2 of Ch. 193, Laws 1971 read "This act is effective on December 31, 1972."

11-721. (5015) Vacancies—how filled—removal of officer.

Cross-References

Filling vacancies in municipal offices after enemy attack, secs. 82-3804, 82-3805.

11-721.1. Recall of elective officers. (1) The holder of any elective office under a mayor-council form of municipal government may be removed at any time by the electors qualified to vote. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by twenty-five per cent (25%) of all qualified electors registered for the last preceding general municipal election, demanding an election for recall of the person sought to be recalled, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of such paper shall make oath before an officer competent to administer oaths that the statements therein are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

(2) Within ten (10) days from the date of filing such petition the city clerk shall examine, and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten (10) days from the date of said certificate. The clerk shall, within ten (10) days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding said election, not less than seventy (70) days nor more than eighty (80) days from the date of the clerk's certificate to the council that a sufficient petition is filed.

(3) The council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared, in all respects as are other elections.

(4) Any vacancy created as a result of such recall election shall be filled as prescribed in section 11-721, R.C.M. 1947.

History: En. Sec. 1, Ch. 329, L. 1971.

tive officers of cities and towns under a mayor-council form of government.

Title of Act

An act to provide for removal of elec-

11-725. (5019) Salaries and qualifications of mayor and alderman. The maximum annual salary of a mayor must be fixed by ordinance in all classes of cities. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town.

History: En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965; amd. Sec. 1, Ch. 224, L. 1967; amd. Sec. 1, Ch. 297, L. 1969.

Amendments

The 1969 amendment inserted "maximum" before "annual salary" and "in all classes of cities" after "ordinance" in the first sentence; deleted specific maximum salaries for mayors of first, second and third class cities; in the former second paragraph, deleted requirement that salaries of aldermen be fixed by ordinance and specific maximum salaries for alderman of first, second and third class cities, making the last sentence of the former second paragraph the present last sentence.

CHAPTER 8—EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—CHIEF OF POLICE AND ATTORNEY

11-806. (5033.1) Financial statement of city or town—contents, etc.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(e).

CHAPTER 9—POWERS OF CITY AND TOWN COUNCILS

Section

11-951. Poll tax—limitation on amount—work for failure to pay.

11-964.1. City or town authorized to sell or trade property to county or political subdivision—resolution and notice of intent.

11-964.2. City or town authorized to obtain property by trade or purchase from county or political subdivision—appraisal unnecessary.

11-982. Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants.

11-932. (5039.29) Regulation of explosives and inflammable material.

Gasoline Within Three-Mile Limit

Ordinance regulating installation and use of coin-operated gasoline dispensing devices located outside, but within three

miles of city limits was proper exercise of city's authority under statute. State ex rel. Pat Griffin Co. v. City of Butte, 151 M 546, 445 P 2d 739.

11-935. (5039.32) Abatement of and regulation concerning nuisances.

Provision of Specific Penalty

Defendant, who was convicted for maintaining public nuisance, was improperly sentenced to jail under section 11-950,

since this section provides specific penalty for nuisance which does not include imprisonment. City of Billings v. Trenka, — M —, 465 P 2d 838.

11-950. (5039.47) Penalties for violations of ordinances—limitations.

Imposition of Jail Sentence

Defendant, who was convicted for maintaining public nuisance, was improperly sentenced to jail under this section since

section 11-935 provides specific penalty for nuisance which does not include imprisonment. City of Billings v. Trenka, — M —, 465 P 2d 838.

11-951. (5039.48) Poll tax—limitation on amount—work for failure to pay. The city or town council has power: To levy and collect annually from each able-bodied resident of the city or town, between the ages of nineteen (19) and forty-five (45) years, a poll tax not exceeding three dollars (\$3) per capita; and in case of failure or refusal of any person within the prescribed age to pay said tax, to provide by ordinance that the person failing or refusing must work one day on the public streets of the city.

History: En. Subd. 49, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 9, Ch. 240, L. 1971. See also history of section 11-901.

Amendments

The 1971 amendment deleted the word "male" after "able-bodied" near the beginning of the section; reduced the minimum age from 21 to 19 years; and made minor changes in style.

11-958. (5039.55) Repealed.

Repeal

Section 11-958 (Subd. 56, Sec. 5039, R. C. M. 1921; Sec. 1, Ch. 115, L. 1925; Sec. 1, Ch. 20, L. 1927), relating to the

power of city and town councils to establish standard weights and measures was repealed by Sec. 43, Ch. 99, Laws 1969.

11-964.1. City or town authorized to sell or trade property to county or political subdivision—resolution and notice of intent. A city or town upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for three (3) weeks in a newspaper published in such city or town or county in which located, shall have power to sell or trade, as the interests of its inhabitants require, any

property, however held or acquired, which is not necessary for the conduct of the city or town business, to any county or political subdivision, without an ordinance, public notice, public auction, bids, or appraisal; proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of councils or commissions involved and entered in the minutes of the regular or special meetings.

History: En. Sec. 1, Ch. 301, L. 1969.

Title of Act

An act to permit cities or towns power

to sell or trade property to any county or political subdivision; and to provide for the purchase thereof, by a city or town without appraisal.

11-964.2. City or town authorized to obtain property by trade or purchase from county or political subdivision—appraisal unnecessary. A city or town shall have power to trade with, or purchase from, any county or political subdivision such property without an appraisal of the property traded or purchased.

History: En. Sec. 2, Ch. 301, L. 1969.

purchase property, secs. 16-1007.1 and 16-1009.1.

Cross-References

Counties authorized to sell, trade or

11-980. (5039.77) Printing contract.

Cross-References

Printing defined, sec. 19-103.1.

11-982. (5039.79) Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants. The city or town council has power: To create special improvements districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding twenty (20) years; to make such assessments payable in installments, and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants.

History: En. Subd. 80, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 11, Ch. 234, L. 1971. See also history of section 11-901.

Amendments

The 1971 amendment deleted from the end of the section "which warrants shall bear interest at a rate not to exceed six per centum per annum"; and made a minor change in style.

CHAPTER 10—POWERS OF CITY AND TOWN COUNCILS (continued)

Section

- 11-1001. Authorization of cities and towns to furnish water and sewage service to industries and to persons without city limits—rates—penalty for violations.
- 11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions.

11-1001. (5040.1) Authorization of cities and towns to furnish water and sewage service to industries and to persons without city limits—rates—penalty for violations. (1) The city or town council of any city or town within the state of Montana, that owns and operates a municipal

water system and/or a municipal sewage system, to furnish water and/or sewage services to the inhabitants of such city or town, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewage system, to any person, factory or other industry, located within the corporate limits of such city or town, or to any person, factory or other industry located outside the corporate limits of such city or town, at reasonable rates filed by the city or town council and approved by the public service commission [provided that delivery of water and delivery of sewage services by any such city or town] to or for the use of any person, factory or other industry located outside the corporate limits of such city or town shall be made within, or at the boundary line of the corporate limits of such city or town, or from any existing water line or sewer line of such city or town located outside of the corporate limits of such city or town, except as hereinafter provided.

(2) The city council of any city within the state of Montana that owns and operates a municipal water system and/or a municipal sewer system to furnish water and sewer services to the inhabitants of such city, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewer system to the inhabitants or to any person, factory, industry or producer of farm or other products located outside of the corporate limits of such city, at reasonable rates filed by the city or town council and approved, when otherwise required by statute, by the public service commission and such city council is further empowered to make collections for furnishing water and sewer services in the same manner as collections are made within the corporate limits.

(3) Any person, firm or corporation residing either inside or outside of the corporate limits of a city owning a municipal water system and/or a municipal sewer system which furnishes water or sewer services as a public utility, who shall willfully turn on the water or sewer line after the same shall have been shut off by or under the direction of the said city for nonpayment of water charges or sewer charges, or who shall unlawfully take water from such water system or shall unlawfully make use of such sewer system shall be guilty of a misdemeanor.

(4) Any person, firm or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town as a condition to initiate such service to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately and not potentially being serviced by the said water or sewer service.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971.

to sewage systems, sewage services and sewer lines throughout the section; inserted "when otherwise required by statute" in the latter part of subsection (2); added subsection (4); and made minor changes in punctuation.

Amendments

The 1971 amendment inserted references

Duty of City

City which undertook pursuant to this section to furnish water to individuals and businesses outside city limits could

not refuse service request of business within its service area. City of Polson v. Public Service Commission, — M —, 473 P 2d 508.

11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions. All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities and towns shall upon approval by two-thirds ($\frac{2}{3}$) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, to enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents, and the respective administrative and governing bodies pay as part of the officers and employees salary ten dollars (\$10) per month for each officer and employee, and provided for employees of educational institutions whose employment contracts show at a minimum a full-time academic year of employment such payment for insurance may be an amount equal to twelve (12) times the monthly rate, but may not exceed one hundred twenty dollars (\$120) per year.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971.

Amendments

The 1968 amendment made the group insurance program mandatory, deleted provision for payment of one-half of total premium not to exceed \$7.50 per month and made payment of that amount mandatory; and deleted a proviso dealing with budget aspects of premiums.

The 1971 amendment inserted "including long-term disability" after "health"; increased the employer contribution from \$7.50 to \$10 per employee per month; added the proviso; and made a minor change in punctuation.

Repealing Clause

Section 2 of Ch. 220, Laws 1969 read "Section 2 of chapter 200, Laws of Montana, 1967, is repealed."

CHAPTER 11—ORDINANCES—INITIATIVE AND REFERENDUM

Section

11-1102. Ordinances—how prepared.

11-1102. (5056) Ordinances—how prepared. (1). * * * [Same as parent volume.]

(2) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference. At least fifteen (15) days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town and three (3) copies of the code, or part to be adopted, shall be filed with the clerk of the city or town for inspection by the public.

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969.

Amendments

The 1969 amendment inserted "fire," before "and plumbing codes" in subsection (2).

CHAPTER 12—CONTRACTS AND FRANCHISES

Section

11-1202. Awarding contracts—advertisements—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.

11-1202.1. Division of contracts to circumvent bidding procedures prohibited.

11-1202. (5070) Awarding contracts—advertisements—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions. All contracts for the purchase of any automobile, truck, or other vehicle or road machinery, or for any other machinery, apparatus, appliances, or equipment, or for any materials or supplies of any kind, or for construction for which must be paid a sum exceeding four thousand dollars (\$4,000), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of five (5) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths ($\frac{3}{4}$) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed four thousand dollars (\$4,000) the council may provide for the payment of such an amount in installments extending over a period of not more than five (5) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be

paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third ($\frac{1}{3}$) thereof shall be paid each year, and if such amount is extended over a term of four (4) years, at least one-fourth ($\frac{1}{4}$) is to be paid each year, and if such amount is extended over a term of five (5) years, at least one-fifth ($\frac{1}{5}$) is to be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971.

Amendments

The 1969 amendment, in the first paragraph, substituted "for the purchase of any automobile * * * a sum exceeding two thousand five hundred dollars (\$2,500)" for "for work, or for supplies, or for material, or for the construction of any building, for which must be paid a sum exceeding one thousand dollars (\$1,000.00)" and raised the maximum duration of a con-

tract to be let without a vote from three to five years; in the second paragraph, substituted "two thousand five hundred dollars (\$2,500.00)" for "one thousand dollars (\$1,000.00)," inserted "an" before "amount," raised the maximum term of installments from three to five years, and inserted "and if such amount is extended * * * term of five (5) years * * * paid each year,".

The 1971 amendment deleted "of any building" after "construction" in the first sentence of the first paragraph; increased the minimum contract amounts specified in the first and second paragraphs from \$2,500 to \$4,000; deleted a final paragraph excluding contracts for professional, technical, engineering and legal services; and made a minor change in phraseology.

11-1202.1. Division of contracts to circumvent bidding procedures prohibited. Whenever any law of this state provides a limitation upon the amount of money that a city or town can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a city or town shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device.

History: En. Sec. 1, Ch. 183, L. 1971.

Title of Act

An act to provide that a city or town shall not circumvent any competitive bidding procedures with respect to the letting

of a contract for a public work or construction project under certain circumstances by dividing a public work or construction project into several contracts, separate work orders or similar devices.

CHAPTER 13—PRESENTATION AND PAYMENT OF CLAIMS—
CITY WARRANTS

Section

11-1307. City warrants—rate of interest.

11-1310. Investment of city or town moneys in city or town warrants and approved securities.

11-1307. (5081) City warrants—rate of interest. When any warrant, drawn upon the treasurer of a city or town, pursuant to any ordinance or resolution or direction of the council of such city or town, is presented to the city or town treasurer for payment, and the same is not paid for want of funds, such treasurer must endorse thereon "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until such warrant is called for payment the warrant shall bear interest at a rate fixed by ordinance.

History: En. Sec. 1, p. 75, L. 1897; re-en. Sec. 3284, Rev. C. 1907; re-en. Sec. 5081, R. C. M. 1921; amd. Sec. 12, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted from the end of the section "and not to exceed six per cent per annum."

11-1310. Investment of city or town moneys in city or town warrants and approved securities. (1) Except as provided in subsection (2) of this section, whenever the city or town has under its control any moneys, for which there is no immediate demand, in any fund which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council is authorized in their discretion to direct the city or town treasurer to purchase legally issued city or town general obligation warrants of the same city or town, thereafter issued against funds in which there is not sufficient funds to pay such city or town warrants at the time of issuance, and in case of such purchase, the city or town council shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the city or town warrant or warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant. The city or town treasurer shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council, and the warrant so purchased shall be registered as other city or town warrants, and bear interest as provided by law. When the designated amounts have been invested the city or town treasurer shall notify the city or town clerk.

(2) Whenever the city or town has under its control any moneys realized from the sale of bonds, for which there is no immediate demand, which in the judgment of the city or town council it would be advantageous

to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less, the city or town council is authorized in their discretion to direct the city or town treasurer to make such investments. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969.

Amendments

The 1969 amendment substituted "funds"

for "money" before "to pay such city or town warrants" in the first sentence of subsection (1); and inserted "including interest * * * time of purchase" in the last sentence of subsection (2).

CHAPTER 14—BUDGET SYSTEM FOR CITIES AND TOWNS

11-1403. (5083.3) Estimates of revenues and disbursements, etc.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(f).

11-1411. (5083.10) State examiner to make rules and regulations, etc.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(f).

CHAPTER 16—JUDICIAL POWERS—POLICE COURTS

Section

11-1602. Jurisdiction of police courts.

11-1602. (5088) Jurisdiction of police courts. The police court has concurrent jurisdiction with the justice of the peace of the following public offenses committed within the county:

1. to 4. * * * [Same as parent volume.]

5. Possession of beer or liquor by persons under the age of nineteen (19) years in violation of section 94-35-106.2, R.C.M. 1947.

6. * * * [Same as parent volume.]

Said police court shall have no jurisdiction of any civil cause, except as provided in the next section.

History: En. Sec. 4911, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1903; re-en. Sec. 3297, Rev. C. 1907; re-en. Sec. 5088, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1967; amd. Sec. 10, Ch. 240, L. 1971. Cal. Pol. C. Sec. 4426.

Amendments

The 1971 amendment reduced the age specified in subdivision 5 from 21 to 19 years.

11-1603. (5089) Jurisdiction for violation of ordinances, etc.

Penalty Assessment on Fines

Statute providing for penalty assessments in addition to fines was void for indirectly enlarging jurisdiction of justice

and police courts in terms of maximum fine which might be imposed. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

CHAPTER 18—POLICE DEPARTMENT, METROPOLITAN POLICE LAW

Section

- 11-1814. Qualifications of policemen.
 11-1815. Salary of chief of police.
 11-1821. Payment of police reserves.
 11-1829. Trustees' duties—auditing of fund—investment—report on retirement of policemen.
 11-1832. Minimum wage of police in first and second class cities.

11-1814. (5106) Qualifications of policemen. The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty (20) years of age nor more than forty years of age, provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five years, or who shall have served continuously as a police officer for a period of not less than twenty-five years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer.

In every case a police officer must be a citizen of the United States, must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months prior to such appointment, such qualifications also to apply to every officer on the eligible list, at the time he shall be transferred to the active list. Provided, however, that the police commission may, in its discretion, waive residency requirements.

Every police officer must be able to speak and write understandingly the English language.

History: En. Sec. 12, Ch. 136, L. 1907; Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R. C. M. 1921; amd. Sec. 6, Ch. 119, L. 1923; amd. Sec. 1, Ch. 29, L. 1959; amd. Sec. 1, Ch. 47, L. 1971; amd. Sec. 1, Ch. 66, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 47 and once by Ch. 66. Neither act mentioned nor included the changes made by the other. Since the two amend-

ments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendments.

Amendments

Chapter 47, Laws of 1971, reduced the minimum appointment age for policemen from twenty-one to twenty years.

Chapter 66, Laws of 1971, added the proviso at the end of the second paragraph.

11-1815. (5107) Salary of chief of police. That from and after July 1, 1969, the salary of the chief of police in cities of the first class shall not be less than six hundred fifty dollars (\$650) per month for the first year of service, and thereafter of at least six hundred fifty dollars (\$650) per month, plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. Subject to such minimum the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: En. Sec. 13, Ch. 136, L. 1907; Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R. C. M. 1921; amd. Sec. 1, Ch. 9, L. 1951; amd. Sec. 1, Ch. 29, L. 1957; amd. Sec. 1, Ch. 356, L. 1969.

Amendments

The 1969 amendment substituted "1969" for "1957" and raised the minimum salary from \$450 to \$650 per month.

11-1821. (5108.5) Payment of police reserves. (1) Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of such city or town, he shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to one-half ($\frac{1}{2}$) the salary he was receiving during the year prior to the time he passed to the police reserve list; provided that after completing twenty (20) years or more of active service if a policeman or officer elects to serve an additional one (1) to ten (10) years then the payment from the police reserves fund shall be increased at the rate of one per cent (1%) per year of such additional service up to a maximum of sixty per cent (60%) of the last year's average salary received as a monthly compensation for services as an active member of the police department.

(2) to (4) * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 100, L. 1927; amd. Sec. 5, Ch. 120, L. 1929; amd. Sec. 1, Ch. 15, L. 1939; amd. Sec. 1, Ch. 69, L. 1951; amd. Sec. 1, Ch. 45, L. 1953; amd. Sec. 1, Ch. 176, L. 1955; amd. Sec. 1, Ch. 369, L. 1971.

Amendments

The 1971 amendment added the proviso to subsection (1).

11-1829. (5108.13) Trustees' duties—auditing of fund—investment—report on retirement of policemen. The board of trustees of said fund, shall audit the same from time to time at least twice during each year, and report the condition of said fund annually to the city or town council on or before the first day of April of each year. And the said board of trustees, shall invest the money in said fund from time to time as may be directed by the city or town council. The money of said fund shall be invested only in bonds of the United States or of the state of Montana, or bonds or warrants of the city or town, in which said fund exists, which are general liabilities of the whole city or town, or in certificates of deposit issued by any state or national bank operating in Montana. And said trustees shall make sale of such bonds, securities, or certificates when desirable and as directed by the city or town council. All such bonds, warrants, and certificates shall be deemed part of the said fund and shall be kept in the possession of the city or town treasurer, and the treasurer shall be responsible therefor in the same manner as he is for all other moneys or funds of the city or town. Before any member of the police department is placed on the reserve list by the city council, the said board of trustees of said fund shall report to the city council in writing their recommendations as to whether or not such member shall be placed upon said reserve list.

History: En. Sec. 13, Ch. 120, L. 1929; amd. Sec. 1, Ch. 84, L. 1971.

Amendments

The 1971 amendment inserted "or in certificates of deposit issued by any state

or national bank operating in Montana" at the end of the third sentence; inserted references to certificates in the fourth and fifth sentences; and made minor changes in phraseology and punctuation.

11-1832. (5108.16) Minimum wage of police in first and second class cities. That from and after July 1, 1969, there shall be paid to each duly confirmed member of the police department of cities of the first class of

the state of Montana, a minimum wage for a daily service of eight (8) hours' work, of at least five hundred twenty-five dollars (\$525) minimum per month for the first year of service, and thereafter of at least five hundred twenty-five dollars (\$525) minimum per month plus one per cent (1%) of said minimum base monthly salary of five hundred twenty-five dollars (\$525) for each additional year service up to and including the twentieth year of such additional service. From and after July 1, 1969, there shall be paid to each duly confirmed member of the police department of cities of the second class of the state of Montana, a minimum wage for a daily service of eight (8) hours' work, of at least four hundred seventy-five dollars (\$475) minimum per month for the first year of service, and thereafter of at least four hundred seventy-five dollars (\$475) minimum per month plus one per cent (1%) of said minimum base monthly salary of four hundred seventy-five dollars (\$475) for each additional year service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 55, L. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957; amd. Sec. 1, Ch. 266, L. 1967; amd. Sec. 1, Ch. 298, L. 1969.

Amendments

The 1969 amendment substituted "1969"

for "1967," deleted "and second" between "cities of the first" and "class," raised the minimum monthly wage base in cities of the first class from \$400 to \$525; and added the second sentence, raising the minimum monthly wage base in cities of the second class from \$400 to \$475.

11-1834. Annual state payments to municipality with police department.

Conditions Attached to Appropriation

Where title of appropriation bill indicated that its purpose was to provide for annual payment to cities and towns for police reserve fund, section of statute which contained restrictions on such pay-

ments, contrary to provisions of Metropolitan Police Law (11-1801 through 11-1837) was repugnant to article V, section 23 of state constitution and therefore void. *City of Helena v. Omholt*, — M —, 468 P 2d 764.

CHAPTER 19—FIRE DEPARTMENT—FIREMEN'S DISABILITY AND PENSION FUND

Section

11-1905. Qualifications of firemen.

11-1912. Tax levy for fund.

11-1919. State auditor to pay fire department relief association out of license fees collected from insurance companies.

11-1932. Minimum wages of firemen in cities of first and second class.

11-1905. (5113) Qualifications of firemen. The qualifications of firemen shall be that they shall not, at the time of original appointment, be over thirty-one (31) years of age, and shall have passed a physical examination by a practicing physician duly authorized to practice in this state, which examination shall be in writing and filed with the city or town clerk, and at the option of said city or town shall be qualified voters of the city or town. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firemen in the performance of their duty.

History: En. Sec. 5, p. 74, L. 1899; 5113, R. C. M. 1921; amd. Sec. 1, Ch. 29, re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. L. 1955; amd. Sec. 1, Ch. 217, L. 1969.

Amendments

The 1969 amendment deleted "be qualified voters of the city or town," after "they shall," added "and at the option * * * city or town" at the end of the first sentence and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 217, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

11-1912. (5119) Tax levy for fund. For the purpose of maintaining said disability and pension funds of such fire department relief association, in an amount equal to two per centum (2%) of the taxable valuation of all taxable property within the limits of any city, town or municipality, the city or town council or the commission or such other proper authority of any municipality, as is now or may hereafter be established, under special or local laws passed by the legislative assembly and adopted by the electors within such city, town or municipality, entitled to vote thereon, at all times when the said relief association fund is in a total amount of less than two per centum (2%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, shall, annually, in the manner provided by law, at the time of the levy of the annual tax, levy a special tax as hereinbelow set forth, which said special tax shall be collected as other taxes are collected and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality:

1. * * * [Same as parent volume.]

2. Whenever the total amount of the fire department relief association's fund is less than two per centum (2%) of the taxable valuation of all taxable property within said city, town or municipality, but more than one per centum (1%) of said taxable valuation, and when the special tax levy of one (1) mill on each dollar of taxable valuation within said city, town or municipality will cause such fund, considering all sources of income, and all payments to be made out of such fund, to exceed two per centum (2%) of the taxable valuation of all taxable property within said city, town or municipality, the tax levy shall be such fractional part of one (1) mill as will produce sufficient revenue to cause the fire department relief association's disability and pension fund to be more than two per centum (2%) of the taxable valuation of all taxable property in said city, town or municipality.

3. * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R. C. M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967.

Compiler's Notes

Subdivision 2 of this section is reprinted herein to correct an error in the printing of the section in the parent volume.

11-1914. Duties of trustees—investment of surplus funds.**Cross-References**

Examiner's functions transferred, sec. 82A-903(3)(g).

11-1919. (5127) State auditor to pay fire department relief association out of license fees collected from insurance companies. At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, out of the license fees on insurance risks collected by him, an amount equal to ten per centum (10%) of the total annual compensation paid by such city or town to its paid or part-paid firemen for services in the previous calendar year. The city clerk of each such city or town shall certify in writing to the state auditor, on or before March 1 of each year, the amount so paid by such city or town as compensation for services to paid or part-paid firemen.

In the event a city of the second class is not entitled to receive a sum equal to twenty-five one hundredths (25/100) mills of its total assessed valuation under the foregoing method of computation then, in that event, the fire department relief association of that city shall receive its money in the same manner as provided below for cities of the third class.

1. and 2. * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R. C. M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd.

Sec. 4, Ch. 208, L. 1967; amd. Sec. 1, Ch. 203, L. 1969.

Amendments

The 1969 amendment inserted the second paragraph.

11-1923. (5130) Annual report of the secretary and treasurer, etc.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(g).

11-1932. Minimum wages of firemen in cities of first and second class. From and after July 1, 1969, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work of at least five hundred twenty-five dollars (\$525) per month for the first year of service, and thereafter of at least five hundred twenty-five dollars (\$525) minimum per month plus one per cent (1%) of said minimum base monthly salary five hundred twenty-five dollars (\$525) for each additional year of service up to and including the twentieth year of such additional service. From and after July 1, 1969, there shall be paid to each duly appointed and confirmed member of the fire department of cities of the second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work, of at least four hundred seventy-five dollars (\$475) per month for the first year of service, and thereafter of at least four hundred seventy-five dollars (\$475) minimum per month plus one per cent (1%) of said minimum base monthly salary of four hundred seventy-five dollars (\$475) for each additional year of service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 293, L. 1947; Ch. 62, L. 1957; amd. Sec. 1, Ch. 267, L. amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, 1967; amd. Sec. 1, Ch. 342, L. 1969.

Amendments

The 1969 amendment substituted "1969" for "1967," deleted "or second" between "cities or towns of the first" and "class," raised the minimum wage of firemen in

first class cities from \$400 per month to \$525; and added the second sentence, raising the minimum wage of firemen in second class cities from \$400 per month to \$475.

CHAPTER 20—FIRE PROTECTION IN UNINCORPORATED TOWNS—
FIRE WARDENS, COMPANIES AND DISTRICTS

Section

- 11-2008. Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.
- 11-2010. Trustees of fire districts—mutual aid agreements.
- 11-2022. Disability, death, insurance and pension benefits.
- 11-2023. Qualification for compensation.
- 11-2024. Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list.
- 11-2025. Payment of a claim—beneficiaries of decedent.

11-2008. (5148) Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries. (a) The board of county commissioners is authorized to establish fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by mailing a copy of the notice by first class mail to each freeholder in the district at the address above shown in the assessment roll, by causing notices of the time and place of such hearing to be posted in at least three (3) of the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty (20) days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between fire district and the city, town or private fire service shall be that of an independent contractor.

(b). * * * [Same as parent volume.]

(c) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%), or more, of the privately owned lands of an area proposed to be detracted from the original district, and who constitute twenty per cent (20%), or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll, by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three (3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and said petition shall be granted, and the original districts shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the entire original district, and who constitute a majority of the taxpayers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

(d). * * * [Same as parent volume.]

Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of the privately owned lands of an area which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is adjacent. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexa-

tion shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within either district affected, and who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll, and provided, that such withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the fire-fighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969.

Amendments

The 1969 amendment inserted a requirement for notice "by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll" in subsections (a) and (c).

Effective Date

Section 2 of Ch. 45, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

11-2010. (5149) Trustees of fire districts—mutual aid agreements. (a) and (b). * * * [Same as parent volume.]

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, lying within five (5) miles of the farthest limits of the district, whether such city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by such city or town, or by such other fire district, to property included within the district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any fire district may elect to make a contract with the city fire department for fire protection, or to be included in the fire district protection facilities. Likewise, the trustees may contract to permit the fire district equipment and facilities to be used by or for such cities or towns lying within the district, or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district. Likewise, the trustees may enter into contracts with public or private parties under which the district fire company may extend fire protection to public or private property lying more than one (1) mile outside of the district or any other district or city limits, but within five (5) miles of the farthest limits of the district, whether such public or private property shall lie within the same county or another county; and the district fire company may use the fire district equipment and facilities outside of the district in the performance of such contracts. All moneys received from such contracts shall be deposited in the county treasurer's office and credited to the fire district fund holding such contracts.

(d). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 107, L. 1911; 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. L. 1925; amd. Sec. 3, Ch. 97, L. 1947; amd.

Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969.

all acts and parts of acts in conflict therewith.

Amendments

The 1969 amendment added the last two sentences to subsection (c).

Effective Date

Section 3 of Ch. 333, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

Repealing Clause

Section 2 of Ch. 333, Laws 1969 repealed

11-2022. (5158.3) Disability, death, insurance and pension benefits. 1.
to 4. * * * [Same as parent volume.]

5. In the case of every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023, and then if the claim provided for under subparagraph two (2) of section 11-2024 shall be completed and filed, the claimant shall be entitled thereafter to participate in the volunteer firemen's pension plan as provided in this act, and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund in excess of one million dollars (\$1,000,000) then the industrial accident board shall pay over said excess amount to the public employees' retirement system, for the payment by said public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing said excess amount by the number of claimants qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such excess amount shall be sufficient to pay each such qualified claimant at least twenty dollars (\$20) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding fiscal year; but if said excess amount shall not be sufficient to pay each qualified claimant at least twenty dollars (\$20) per month, then each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified claimant shall not exceed the sum of twenty-five dollars (\$25) per month, and the amount to be set aside hereunder from the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of twenty-five dollars (\$25) per month to each claimant qualified as of the beginning of such fiscal year. For the purpose of computation and payment of benefits under this act, if children of any volunteer fireman shall become eligible for benefits hereunder, then all children of such volunteer fireman shall be treated collectively as one (1) claimant. The fiscal year for the purpose of this act shall begin on the first day of July of each year and end on the last day of June of each year.

History: En. Sec. 3, Ch. 65, L. 1935; 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. L. 1967; amd. Sec. 1, Ch. 80, L. 1971.

Amendments

The 1971 amendment removed from the first sentence of subsection 5 a requirement that the volunteer fireman himself complete and file the claim; substituted "as provided in this act" for "throughout the remainder of his lifetime" in the

latter part of the first sentence of subsection 5; substituted "claimant" for "volunteer fireman" throughout subsection 5; inserted the next to last sentence in subsection 5; and made minor changes in phraseology.

11-2023. (5158.4) Qualification for compensation. (1) In order to qualify for the compensation provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated area, town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

(2) In order to qualify for participation in the volunteer firemen's pension plan under subparagraph five (5) of section 11-2022, a volunteer fireman must meet each of the following requirements:

(A) He must have completed a total of at least ten (10) years' service as an active volunteer fireman and as an active member of a qualified volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village; provided, that in the case of any volunteer fireman having completed at least ten (10) years' but less than twenty (20) years' service as an active volunteer fireman, then the claimant hereunder shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the numerator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20); and provided, further that from and after July 1, 1965, no volunteer fireman shall receive credit for any year of membership in any such volunteer fire company unless throughout such year such volunteer fire company shall have maintained fire-fighting equipment in serviceable condition of a value of two thousand five hundred dollars (\$2,500) or more, and unless throughout such year such volunteer fire company, or the fire district served thereby, shall have been rated in class five (5), six (6), seven (7), eight (8), nine (9) or ten (10) by the board of fire underwriters for the purpose of fire insurance premium rates; provided, further, that such years of active service shall be cumulative and need not be continuous, and that such service need not be acquired with one (1) single fire company, but may be a total of separate periods of active service with different fire companies organized under the laws of the state of Montana in different fire districts in unincorporated areas, towns or villages. From and after passage of this act, the annual period of service for the purpose of this act shall be the fiscal year; no fractional part of any year shall count toward the service requirement, and to receive credit for any particular year a volunteer fireman must serve with one (1) particular volunteer fire company throughout that entire fiscal year;

(B) He must have attained the age of fifty-five (55) years (but he need not be an active volunteer fireman or an active member of any volunteer fire company at the time of reaching such age); provided, that in the case of any volunteer fireman having completed at least ten (10)

years' but less than twenty (20) years' service as an active volunteer fireman, the claimant hereunder shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the numerator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20); and

(C) During each of the years for which he claims credit under subparagraph (A) above, he must have completed a minimum of thirty (30) hours of instruction in matters pertaining to fire fighting, under a program formulated and supervised by the chief of his volunteer fire company. Provided, however, that any volunteer fireman who is an active member of a volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village at the time of passage of this act shall receive credit against the said service requirement to the extent of one (1) year's credit for each two (2) years' service completed or to be completed by him prior to July 1, 1965, as such active member of any such volunteer fire company or companies; for the purpose of this credit for prior service it shall not be necessary either that the volunteer fire company or companies with which such service has been rendered shall satisfy the requirements of subparagraph (A) above, or that the individual volunteer fireman shall during such prior service have satisfied the requirements of subparagraph (C) above; but in any event no more than ten (10) years' credit shall be allowed any such volunteer fireman by reason of such service prior to July 1, 1965. For the purpose of establishing such prior service credit, the chief of each volunteer fire company shall on or before September 1, 1968, prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, setting forth the names and residence addresses of each of the members of his volunteer fire company who shall have qualified for one (1) or more years' credit for prior service, and setting forth the number of years of credit to which each thereof shall be entitled.

History: En. Sec. 4, Ch. 65, L. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971.

Amendments

The 1969 amendment inserted "area" before "town or village" in subsection (1); and substituted "two thousand five hun-

dred dollars (\$2,500)" for "seven hundred fifty dollars (\$750)" and added class "ten (10)" in subdivision (2)(A).

The 1971 amendment reduced the service requirements specified in subdivision (2)(A) from twenty to ten years; inserted the first proviso in subdivision (2)(A); added the proviso to subdivision (2)(B); and made minor changes in phraseology.

11-2024. (5185.5) Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list. 1. A fireman claiming compensation under subparagraphs one (1), two (2), three (3) or four (4), of section 11-2022, must file his claim with the industrial accident board upon a form to be provided therefor, which claim shall contain the name and address of the claimant, date, place and manner of incurring of disability, name and address of attending physician or surgeon and/or nurse, if any, dates of confinement, if confined, or if not confined, dates of attendance by physician or surgeon, dates of attendance by nurse; affidavit of attending physician or surgeon as to nature of dis-

ability, number and dates of attendance and statement of charges; if confined to hospital, an affidavit of person in charge stating nature of disability, dates of confinement and expenses incurred while so confined; affidavit of chief or secretary of fire company stating that said fire company was duly organized under the laws of Montana in an unincorporated town or village, statement that claimant was, at the date of disability an active enrolled member of such company, and that the disability was incurred in line of duty; an affidavit of the nurse stating the nature of disability, dates of attendance, and statement of charges for services; said claim shall be verified by the claimant, the attending physician or surgeon and nurse, if any, and by the person in charge of the hospital, if confined; said claim shall be filed with the board within one (1) year from the date of disability.

2. A claimant claiming eligibility under the volunteer firemen's pension plan must file his claim with the public employees' retirement system upon a form to be provided therefor by the public employees' retirement system, which claim shall contain the name, address and date of birth of the claimant, and of the volunteer fireman if other than the claimant; the fiscal year for which eligibility shall commence; the years during which service as a volunteer fireman was rendered and the name or names of the volunteer fire company or companies with which such service was rendered. Such claim shall be filed on or before the first day of May of any year. The public employees' retirement system may require such proof of age and service as it may deem proper, but the certificates filed or to be filed under section 11-2007 and subparagraph 2 of section 11-2023 shall be accepted by the public employees' retirement system as prima facie proof of such service. If such claim be properly filed and such claimant be found by the public employees' retirement system properly qualified to participate in such volunteer firemen's pension plan, then the name of the claimant shall be added to the list of qualified persons and the claimant shall then be entitled to participate in said volunteer firemen's pension plan as of the fiscal year beginning the first day of July following the filing of such claim.

History: En. Sec. 5, Ch. 65, L. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971.

Amendments

The 1971 amendment substituted "claim-

ant" or "person" for "volunteer fireman" in two places in subsection 2; inserted "and of the volunteer fireman if other than the claimant" after "date of birth of the claimant" in the first sentence of subsection 2; and made minor changes in phraseology and style.

11-2025. (5158.6) Payment of a claim—beneficiaries of decedent. 1. Upon receipt of a claim under subparagraphs one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022, by the industrial accident board, if the same is found to be in compliance with the provisions of subsection one (1) of section 11-2024, the board must order the allowance thereof, and pay the same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

2. All payments under the volunteer firemen's pension plan shall be approved by the public employees' retirement system and paid by war-

rants drawn upon the earmarked revenue fund, payable to the order of the individual qualified volunteer fireman; provided, however, that in the event of the death of any otherwise qualified volunteer fireman before reaching the age of fifty-five (55) years, or in the event of the death of any such volunteer fireman after he has qualified for payments hereunder but before he has received payments hereunder totaling at least two thousand dollars (\$2,000); and if such deceased volunteer fireman shall have left a widow, then such pension shall be paid or continue to be paid to said widow by a warrant or warrants drawn upon the earmarked revenue fund and payable to the order of said widow, until her death or remarriage; or if said deceased volunteer fireman shall have left no widow but shall have left a child or children under the age of eighteen (18) years, then such pension shall be paid or continue to be paid to the guardian or other person having custody of the said child or children, until the youngest child shall reach the age of eighteen (18) years. Provided, further, that in the event of such payments after the death of a volunteer fireman, to or for his widow or children, then such pension shall terminate, and no further payments shall be made hereunder, when a total of two thousand dollars (\$2,000) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death. If such deceased volunteer fireman shall leave neither widow nor child under the age of eighteen (18) years, then his pension shall terminate at the end of the month prior to the month in which his death occurs.

History: En. Sec. 6, Ch. 65, L. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971.

Amendments

The 1971 amendment completely rewrote the first proviso to subsection 2, for previous text of which see parent volume; inserted the second proviso in subsection 2; deleted from the end of subsection 2 a clause reading "and in any event such pension shall terminate no later than the end of the fiscal year in which death

occurs"; and made minor changes in phraseology and style.

Repealing Clause

Section 5 of Ch. 80, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 80, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

CHAPTER 22—SPECIAL IMPROVEMENT DISTRICTS

Section

- 11-2201. Special improvements—powers of city council.
- 11-2206. Protests against proposed work.
- 11-2214. Methods of payments of improvements.
- 11-2214.2. Assessments and bonds for pedestrian malls or off-street parking.
- 11-2217. Cities and towns may establish sewage treatment and disposal plant systems and water supply and distribution systems.
- 11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds.
- 11-2226. Construction of sidewalks, curbs and gutters without formation of special improvement district.
- 11-2226.1. Construction or replacement of alley approaches without formation of special improvement districts.
- 11-2227. Interest on assessments.
- 11-2231. Form of bonds and warrants.
- 11-2249. Bonds and warrants—interest—redemption.
- 11-2269. Special improvement district revolving fund.
- 11-2270. Transfers from general fund and tax levy for revolving fund.

- 11-2271. Loans from revolving fund for paying improvement district warrants—authorization by electors.
- 11-2272. Lien for loans from revolving fund—surplus district funds transferred to revolving fund, investment of funds.
- 11-2275. Creation and maintenance of fund.
- 11-2277. Determination of provisions of bonds—maturity—interest—form.

11-2201. (5225) Special improvements—powers of city council. All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, alleys, places, or courts, for the purposes of this chapter, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to acquire private property for right of way, and to order to be done any of the work mentioned in this chapter under the proceedings hereinafter described.

Further, that in addition to the powers heretofore granted, when the public interest or convenience requires, the governing body of a municipality may:

(1) to (4) * * * [Same as parent volume.]

(a) and (b) * * * [Same as parent volume.]

(c) If a petition for the formation of an improvement district under the provisions of this section is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of such fact, shall adopt a resolution of intention to order the improvement pursuant to the provisions of section 11-2204, and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to the following provisions, without the necessity of the publication and posting of the resolution of intention provided for in section 11-2204.

(d) and (e) * * * [Same as parent volume.]

(5) Create special lighting districts on any street or streets or public highway therein or portions thereof for the purposes of lighting such street or streets or public highway and is hereby empowered to assess such costs for installation and maintenance to property abutting thereto and to collect such costs by special assessment against said property.

Further, that in addition to the powers heretofore granted, the city or town council is empowered to make assessments in the manner provided in section 11-2245 hereafter on property abutting said street or highway and lying outside the boundaries of said city or town, so long as that portion of the street or public highway to be lighted is adjacent to the boundary line of said city or town or lies partially within said city or town or extends from one point within said city or town to another point within said city or town.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R. C. M. 1921; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971.

Amendments

The 1971 amendment added subdivision (5); and made a minor change in style.

11-2206. (5229) Protests against proposed work. (1). * * * [Same as parent volume.]

(2) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be so made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that, except as hereinafter provided, when the protest is against the proposed work, and the cost thereof is to be assessed against property fronting thereon, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said sufficient protest shall have been received by said clerk of the city or town council or commission; provided, however, that when the improvement proposed is the paving, with necessary incidentals, of not more than one (1) cross block, to connect with streets or avenues already paved for a continuous distance of three (3) blocks or more running (at) a right angle, or substantially so, with the single cross block so proposed to be paved, in such case the city or town council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface; and provided, too, that in case the improvement is the construction of a sanitary sewer such protest may be overruled by an affirmative vote of a majority of the members of the city or town council or commission; unless such protest is made by the owners of more than seventy-five per cent of the property affected as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewer.

(3). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R. C. M. 1921; amd. Sec. 2, Ch. 135, L. 1923; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969.

Amendments

The 1969 amendment substituted "fifty

per cent" for "forty per cent" twice in the first proviso in subsection (2).

Effective Date

Section 2 of Ch. 149, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

11-2214. (5238) Methods of payments of improvements. (1) To defray the cost of the making of any of the improvements provided for in this act, the city council or commission shall adopt one of the two following methods of assessment; unless otherwise provided in subsection 1 (c):

(a) The city council or commission shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the city council or

commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersections, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within twenty-five (25) feet of the line of the street on which the improvement is to be made and all other land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of land within the district lying within twenty-five (25) feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other land within the district shall bear.

(b) * * * [Same as parent volume.]

(c) Where curbs, gutters, alley approaches, streets, crossings and utility service connections are an integral part of the creation of storm sewer districts, sanitary sewer districts or street pavement districts, the city council or commission may assess a portion of the improvements upon the area basis, as set forth under subsection 1 (a); other portions of the improvements upon a lineal feet basis, as set forth under subsection 1 (b); and utility service connections upon a lump sum based on the bid price in the improvement district contract and assessed only against the lots, tracts or parcel of land served by the utility connection or connections; all within the same special improvement district, so long as such assessment is equitable.

(2) to (6) * * * [Same as parent volume.]

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R. C. M. 1921; amd. Sec. 1, Ch. 163, L. 1925; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971.

otherwise provided in subsection 1(c)" to the end of the preliminary paragraph of subsection (1); inserted subdivision (1)(c); and made a minor change in punctuation.

Amendments

The 1971 amendment added "unless

11-2214.2. Assessments and bonds for pedestrian malls or off-street parking. (a) to (c) * * * [Same as parent volume.]

(d) The bonds shall be issued as of the date of the warrant, and shall bear interest from such date at the rate specified in the resolution of intention. They shall have semiannual interest coupons attached, the first of which shall be payable on January 1 or July 1, as the case may be, occurring ninety (90) days after the date of the bond, and shall be for the interest accrued at that time.

(e) * * * [Same as parent volume.]

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971.

ceeding eight per cent (8%) per annum" from the end of the first sentence of subsection (d).

Amendments

The 1971 amendment deleted "not ex-

11-2217. Cities and towns may establish sewage treatment and disposal plant systems and water supply and distribution systems. Any city or town may when authorized so to do by a majority vote of the qualified electors voting on the question establish, build, construct, reconstruct and/or extend a storm and/or sanitary sewerage system and/or a plant or plants for treatment or disposal of sewage therefrom, or a water supply and/or distribution system, or any combinations of such systems, and may operate and maintain such facilities for public use, and in addition to all other powers granted to it, such municipality shall have authority, by ordinance duly adopted by the governing body to charge just and equitable rates, charges or rentals for the services and benefits directly or indirectly furnished thereby. Such rates, charges or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The sewer charges may be fixed on the basis of water consumption or any other equitable basis the governing body may deem appropriate and, if the governing body determines that the sewage treatment and/or storm water disposal prevents pollution of sources of water supply, may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of such facilities and services. In the event of nonpayment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water to such premises to be discontinued until such charges are paid.

In this act "qualified electors" shall mean registered electors of the municipality. The question of building, constructing, reconstructing or extending the system, plant or plants and the question of issuing and selling revenue bonds for such purpose may be submitted as a single proposition or as separate propositions. Any election under this act may be called by a resolution of the governing body which it may adopt without being previously petitioned to do so.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971.

names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality" from the end of the first sentence of the second paragraph.

Amendments

The 1971 amendment deleted "whose

11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds. (1) Any such municipality may issue and sell negotiable revenue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized so to do by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose, and noticed and conducted in accordance with the provisions of sections 11-2308 to 11-2310, inclusive; and all bonds shall mature within forty (40) years from date of bonds, and may be registered as to ownership of principal only with the treasurer of said municipality, if so directed

by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

(2) to (8) * * * [Same as parent volume.]

(9) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than one million dollars (\$1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity, or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for co-operatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(10) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "which bonds shall bear interest at a rate * * * six per centum (6%) per annum" after "sections 11-2308 to 11-2310, inclusive" near the middle of subsection (1); and made a minor change in punctuation.

11-2226. (5244) Construction of sidewalks, curbs and gutters without formation of special improvement district. The city council may order sidewalks, curbs and gutters, or any combination thereof, constructed in front of any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such sidewalk, curb and gutter, or any combination thereof, constructed, such order shall be entered upon the minutes of the council and shall name the street along which said sidewalk, curb and gutter, or any combination thereof, is to be constructed. After the making of such order, written

notice thereof shall be given the owner or agent of such property, in such manner as the council may direct. If the owner or agent of such lot or parcel of land shall fail or neglect for a period of thirty (30) days after the date of service of such notice to cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, the city may construct or cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the property in front of which the same is constructed.

When any such sidewalk, curb and gutter, or any combination thereof, is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special sidewalk, curb and gutter fund, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said sidewalks, curbs and gutters, or any combination thereof, may be spread over a term of not to exceed eight (8) years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs and gutters, or any combination thereof, have been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1929; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971.

warrants shall bear interest at the rate of six per centum (6%) per annum" before "and the council may provide for the payment of said interest annually" near the end of the third paragraph; and made minor changes in style.

Amendments

The 1971 amendment deleted "which

11-2226.1. Construction or replacement of alley approaches without formation of special improvement districts. The city council may order alley approaches constructed or replaced adjacent to any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such alley approaches constructed or replaced, such order shall be entered upon the minutes of the council and shall name the street along which said alley approach is to be constructed or replaced. What constitutes an alley approach shall be defined by the city council of each municipality which orders in alley approaches as provided in this section. After the making of such order, written notice thereof shall be given the owners or agents of all adjacent owners having access to their properties by said alley approach, in such a manner as the council may direct. If the owners or agents of all adjacent owners of such lots or parcels of land shall fail or neglect for a period of thirty (30) days after the date of service of such notice to cause such alley approaches

to be constructed or replaced, the city may construct or cause such alley approach to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the lots or parcels of land having access to said property via the said constructed alley approaches.

When any such alley approach is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special alley approach fund, which warrants shall bear interest at the rate of up to six per cent (6%) a year, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said alley approach may be spread over a term of not to exceed eight (8) years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land having access to said property via the said alley approach which has been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. 11-2226.1 by Sec. 1, Ch. 206, L. 1971.

Title of Act

An act providing for construction or replacement of alley approaches without formation of special improvement districts.

11-2227. (5245) Interest on assessments. Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged, and the treasurer, in collecting such special assessment taxes, if the same are payable in one (1) installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment; and if such assessment be payable in installments the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid.

History: En. Sec. 21, Ch. 89, L. 1913; re-en. Sec. 5245, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1937; amd. Sec. 16, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not exceeding six per cent (6%) per annum" after "simple interest shall be charged" near the beginning of the section; and made a minor change in style.

11-2231. (5249) Form of bonds and warrants. All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. _____
 United States of America,
 State of Montana

Warrant or _____ Dollars
 (Bond No. —) \$_____

Interest at the rate of _____ per cent per annum, payable annually.

Special improvement district coupon warrant or bond
 _____, Montana

Issued by the city of _____, Montana.

The treasurer of the city of _____, Montana, will pay to bearer, the sum of _____ dollars as authorized by resolution No. _____ as passed on the _____ day of _____, 19—, creating special improvement district No. _____ for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of _____, Montana.

This warrant (or bond) bears interest at the rate of _____ per cent per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened and been performed, in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of _____, Montana relating to the issuance thereof.

(seal)

Dated at _____, Montana, this _____ day of _____, 19—. City of _____, Montana.

By: _____, Mayor
 _____, City Clerk

Registered at the office of the city treasurer of _____, Montana, this _____ day of _____, 19—.

_____ City Treasurer

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest from the date of

registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall bear the signatures of the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk. Said bonds shall be in denominations of one hundred (\$100) dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty (20) years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds) if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not exceeding six (6%) per cent per annum" after "and shall bear interest" near the beginning of the first sentence of the paragraph following the form for bonds and warrants.

11-2249. (5263) Bonds and warrants—interest—redemption. All cost and expenses incurred in the construction of the improvement specified in this act shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance drawn against a fund to be known as "Special Improvement Lighting District No. _____ Fund." Said warrants or bonds shall be in the denomination of one hundred dollars (\$100) or fractions or multiples thereof; and may be issued in installments. Such warrants or bonds shall be redeemed by the treasurer when there is money in the fund against which said warrants or bonds are issued available therefor, and may extend over a period not to exceed eight (8) years, and shall bear interest from the date of registration thereof, until called for redemption or paid in full, interest to be payable annually on the first day of January of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk. The requirements of this

section shall apply to all special improvement lighting districts, including those now in the process of formation or to be formed hereafter.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not exceeding six per cent (6%) per annum" after "shall bear interest" in the third sentence; and made minor changes in style.

11-2269. (5277.1) Special improvement district revolving fund. The city or town council or commission of any city or town which has heretofore created, or may hereafter create, any special improvement district or districts for any purpose, may in its discretion, as to such district or districts heretofore created, and shall, as to such district or districts hereafter created, in order to secure prompt payment of any special improvement district bonds or sidewalk, curb and alley approach warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by ordinance a fund to be known and designated as "Special Improvement District Revolving Fund."

History: En. Sec. 1, Ch. 24, L. 1929; amd. Sec. 1, Ch. 255, L. 1971.

Amendments

The 1971 amendment inserted "sidewalk, curb and alley approach" before "warrants" in the latter part of the section.

11-2270. (5277.2) Transfers from general fund and tax levy for revolving fund. For the purpose of providing funds for such revolving fund the city or town council

(1) * * * [Same as parent volume.]

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding special improvement district bonds or sidewalk, curb and alley approach warrants.

History: En. Sec. 2, Ch. 24, L. 1929; amd. Sec. 2, Ch. 255, L. 1971.

walk, curb and alley approach" before "warrants" at the end of subdivision (2); and made a minor change in phraseology.

Amendments

The 1971 amendment inserted "or side-

11-2271. (5277.3) Loans from revolving fund for paying improvement district warrants—authorization by electors. (1) Whenever any special improvement district bond or sidewalk, curb and alley approach warrants, or any interest thereon, shall be, at the time of the passage of this act, or shall thereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon, or in case of such bonds or warrants due at the time of the

passage of this act, such part of the amount due on such bond or warrant, whether it be for principal or for interest or for both as the council may in its discretion elect or determine shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) In connection with any public offering of special improvement district bonds or sidewalk, curb and alley approach warrants, the city or town council may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 11-2270 by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the city or town council may so agree to and undertake, subject to the maximum limitations imposed by said section 11-2270, which said undertakings and agreements shall be binding upon said city or town so long as any of said special improvement district bonds or sidewalk, curb and alley approach warrants so offered, or any interest thereon, remain unpaid.

History: En. Sec. 3, Ch. 24, L. 1929; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971.

Amendments

Chapter 158, Laws of 1971, deleted from the end of subsection (1) a proviso and a sentence requiring that the revolving fund be approved by the taxpayers. For prior text, see parent volume.

Chapter 255, Laws of 1971, inserted "sidewalk, curb and alley approach" before "warrants" near the beginning of subsection (1) and near the beginning and near the end of subsection (2); and made a minor change in phraseology.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 158 and once by Ch. 255. Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by both 1971 acts.

11-2272. (5277.4) Lien for loans from revolving fund—surplus district funds transferred to revolving fund, investment of funds. Whenever any loan is made to any special improvement district fund or sidewalk, curb and alley approach warrants from the revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the council, be transferred to the revolving fund; and after all the bonds and warrants issued on any special improvement district or sidewalk, curb and alley approach warrants have been fully paid, all moneys remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund.

Surplus reserves not needed for immediate use, may from time to time be invested in securities of the United States or certificates of deposit, approved by the city council. The interest earned from such investments shall be placed to the credit of the revolving fund.

History: En. Sec. 4, Ch. 24, L. 1929; walk, curb and alley approach warrants" in two places in the first paragraph; and added the second paragraph.

Amendments

The 1971 amendment inserted "or side-

11-2275. Creation and maintenance of fund. A supplemental revolving fund may be created by ordinance subject to the approval of a majority of the qualified electors voting upon the question at a general or special election. As used in this act "qualified electors" shall mean registered electors of the municipality. The supplemental revolving fund shall be created and maintained solely from the net revenues of parking meters and the ordinance may pledge to said fund all or any part of the said net revenues of parking meters which may be then owned or leased or rented or thereafter acquired by the city or town. Said ordinance shall contain such provisions in respect to the purchase, control, operation, repair and maintenance of parking meters, including rates to be charged, and the application of the net revenues therefrom and the management and use of the supplemental revolving fund as the council shall deem necessary.

History: En. Sec. 2, Ch. 260, L. 1947; amd. Sec. 8, Ch. 158, L. 1971.

Amendments

The 1971 amendment substituted "registered electors of the municipality" at

the end of the second sentence for "registered electors whose names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality."

11-2277. Determination of provisions of bonds—maturity—interest—form. Whenever the council has been authorized to issue bonds hereunder, the council may by resolution determine to issue such bonds and provide for the guaranty thereof by the supplemental revolving fund. Such resolution shall fix the amount, maturity, and interest rate and provide for the sale of bonds in such manner as the council shall determine. The governing body of the municipality in determining the cost of said improvement may include estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expenses, cost of the parking meters, and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed for the special improvements for which bonds are issued. The bonds may mature at one time, not exceeding the maximum maturity of the assessments to be levied for said improvement or may mature in installments at various times during the term of said assessments, but in no event shall such bonds mature beyond ten (10) years from date thereof. Said bonds, as the council shall determine, shall be subject to redemption prior to maturity if so determined by the council, and may be payable at any suitable bank or trust company either within or without the state of Montana. The resolution providing for the issuance of bonds may also contain such reasonable covenants for

the protection of the holders thereof as the council may determine. The bonds issued hereunder shall be in substantially the form provided in section 11-2231 as modified by the provisions hereof.

History: En. Sec. 4, Ch. 260, L. 1947; interest payable annually or semi-annually, not exceeding four and one-half (4½%) per cent per annum" after "Said bonds" at the beginning of the fifth sentence.
amd. Sec. 19, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "shall bear

CHAPTER 23—MUNICIPAL BONDS AND INDEBTEDNESS

Section

- 11-2304. Terms of bonds—rates of interest.
- 11-2306. Petition for election—form—proof.
- 11-2310. Registration of electors.
- 11-2315. Sale of bonds.

11-2304. (5278.4) Terms of bonds—rates of interest. No bonds for any purpose shall be issued for a longer term than twenty (20) years, and when bonds are issued for the purpose of refunding bonds theretofore issued and outstanding, such bonds shall not be issued for a longer term than ten (10) years, provided that if the unexpired term of the bonds to be refunded shall be more than ten (10) years, then in such event, the refunding bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5) years may be redeemable at the option of the city or town five (5) years from the date of issue and on any interest payment date thereafter, and it shall be so recited in the bonds. The maximum rate of interest which any bonds may bear shall be seven per cent (7%) per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 160, L. 1931;
amd. Sec. 1, Ch. 34, L. 1933; amd. Sec. 2,
Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L.
1971.

Amendments

The 1971 amendment increased the maximum rate of interest of bonds authorized to be issued under this chapter from 6% to 7% per annum.

11-2306. (5278.6) Petition for election—form—proof. No bonds shall be issued by a city or town for any purpose, except to fund or refund warrants or bonds issued prior to and outstanding on July first, 1942, as authorized in section 11-2301, unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the city or town, and approved, as hereinafter provided, and no such election shall be called unless there has been presented to the city or town council a petition, asking that such election be held and question submitted, signed by not less than twenty per centum (20%) of the qualified electors of the city or town. Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition, if each purpose with an estimate of the amount of bonds to be issued therefor is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets

identical in form and fastened together, after being circulated and signed, so as to form a single complete petition before being delivered to the city or town clerk, as hereinafter provided. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating, such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the city or town clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate, under his official signature, which shall set forth:

(1) The total number of persons who are registered electors.

(2) * * * [Same as parent volume.]

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors of the city or town.

History: En. Sec. 6, Ch. 160, L. 1931; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted "who are taxpayers upon property within such city or town and whose names appear on the last completed assessment roll for state and county taxes, as taxpayers within such city or town" from the end of the

first sentence of the first paragraph; deleted "and whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town" from the end of subdivision (1); and substituted "registered electors of the city or town" at the end of subdivision (3) for "registered electors whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town."

11-2310. (5278.10) Registration of electors. Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th) day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are entitled to vote at such election and shall prepare precinct registers for such election as provided in section 23-3012 and deliver the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors.

History: En. Sec. 10, Ch. 160, L. 1931; 17, Ch. 64, L. 1959; amd. Sec. 10, Ch. 158, amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. L. 1971.

Amendments

The 1971 amendment deleted from the beginning of the section a sentence reading "Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon property within the city or town, shall be entitled to vote upon any proposition

of issuing bonds by the city or town"; deleted "who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes and" before "who are entitled to vote" in the first sentence of the second paragraph; and substituted a reference to section 23-3012 for a reference to section 23-515.

11-2315. (5278.15) Sale of bonds. The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in determining the kind of bonds to be issued the council shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the city or town, and the council shall accept the bid they shall judge most advantageous to the city or town. No attorneys fees, brokerage or other fees or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any and all bids and to sell the bonds at private sale if they deem it for the best interests of the city or town, provided, however, that such bonds shall not be sold at less than par and accrued interest to date of delivery.

History: En. Sec. 15, Ch. 160, L. 1931; amd. Sec. 8, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted the proviso

to the third sentence; and deleted "shall not bear a greater rate of interest than six per centum (6%) per annum and" after "such bonds" in the proviso to the last sentence.

11-2319. (5278.19) Delivery of bonds—payment for same, etc.

Cross-References

Board of land commissioners functions transferred, Sec. 82A-205(1)(a).

CHAPTER 24—MUNICIPAL REVENUE BOND ACT OF 1939

Section

11-2402. Definitions.

11-2404. Authorization of undertaking—form and contents of bonds.

11-2402. Definitions. Whenever used in this act, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall mean any one or a combination of the following: water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment, disposal works, public airport construction and public airport building, convention facilities, public recreation facilities and public parking facilities; or other

revenue-producing facilities and services authorized in these codes for cities and towns.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 126, L. 1939;
amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1,
Ch. 111, L. 1959; amd. Sec. 1, Ch. 254, L.
1969.

Amendments

The 1969 amendment inserted "convention facilities, * * * parking facilities" in the definition of "undertaking."

11-2404. Authorization of undertaking—form and contents of bonds.

The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the qualified electors voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election; provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election.

Said bonds shall bear interest at such rate or rates not exceeding nine per cent (9%) per annum, payable semiannually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California, except that, in the event the bond issue is in an amount of less than one hundred fifty thousand dollars (\$150,000), the bond issue shall be advertised at least five (5) days prior to such sale in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco, and also in a newspaper as specified in section 16-1201 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to

this chapter. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971.

on March 1, 1971, and Ch. 234 on March 9, 1971. Chapter 234 incorporated the change made by Ch. 158. Therefore, the compiler has used the text of Ch. 234 above.

Compiler's Notes

Section 16-1201, referred to in the second paragraph of this section, was repealed by Sec. 10, Ch. 280, Laws 1967. For similar provisions in current law, see sec. 16-1230.

This section was amended twice in 1971, once by Ch. 158 and once by Ch. 234. Chapter 158 was approved by the governor

Amendments

Chapter 158, Laws of 1971, substituted "a majority of the qualified electors" for "a majority of the taxpayers" in the first paragraph.

Chapter 234, Laws of 1971, included the change made by Ch. 158, and increased the maximum rate of interest on bonds authorized to be issued under this chapter from 6% to 9% per annum.

CHAPTER 27—BUILDING REGULATIONS—ZONING COMMISSION

Section

11-2702. Districts for effecting building restrictions.

11-2705. Changes.

11-2702. (5305.2) Districts for effecting building restrictions. (1)

For any or all of said purposes the local city or town council or other legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(2) The local city or town council, or other legislative body which has adopted a master plan pursuant to Title 11, chapter 38 may extend the application of its zoning or subdivision regulations or both beyond its limits in any direction, but not in a county which has adopted such regulations within the contemplated area; provided that a city of the first class as defined in section 11-201 of this code may not extend the application of its zoning or subdivision regulations or both more than three (3) miles beyond its limits, a city of the second class may not so extend more than two (2) miles beyond its limits, and a city or town of the third class may not so extend more than one (1) mile beyond its limits. Provided, further, that where two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by this section, then the extension of zoning or subdivision regulations or both by these cities shall terminate at a boundary line agreed upon by the cities so concerned. Any city or town council or other legislative body, may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county board adopts a master plan pursuant to

Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area. As a prerequisite to the exercise of this power, a city planning board must be increased to include two (2) representatives from the unincorporated area which is to be affected. These representatives shall be appointed by the board of county commissioners. Such representation, however, shall cease when the county board adopts a master plan pursuant to Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area.

A city or town, which has as its plan of government the commission-manager plan, shall be excluded from the provision of section 11-2702 (2) which defines extraterritorial authority to review proposed subdivisions.

History: En. Sec. 2, Ch. 136, L. 1929;
amd. Sec. 1, Ch. 273, L. 1971.

Amendments

The 1971 amendment designated the former language as subsection (1) and added subsection(2).

11-2705. (5305.5) Changes. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty per centum (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty (150) feet therefrom, or of those adjacent on either side thereof within the same block, or of those directly opposite thereof extending one hundred and fifty (150) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths ($\frac{3}{4}$) of all the members of the city or town council or legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

History: En. Sec. 5, Ch. 136, L. 1929;
amd. Sec. 1, Ch. 161, L. 1969.

those adjacent * * * same block" before
"or of those directly opposite * * *" in
the second sentence.

Amendments

The 1969 amendment inserted "or of

11-2707. (5305.7) Board of adjustment.

Evidence at Hearing

Taking of additional evidence by district court on appeal from board of adjustment's denial of zoning variance was not

abuse of discretion even though board did not present any additional evidence. *Lambros v. Board of Adjustment of City of Missoula*, 153 M 20, 452 P 2d 398.

CHAPTER 31—COMMISSION FORM OF GOVERNMENT

Section

11-3116. Bribery—false answers concerning qualifications of elector—voting by disqualified person.

11-3116. (5379) Bribery—false answers concerning qualifications of elector—voting by disqualified person. Any person offering to give a bribe, either in money or other consideration, to any elector, for the purpose of influencing his vote at any election provided in this act, or

any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election who has not met the residency requirements for voting as provided by the constitution of the state of Montana, or who is not of the minimum age provided by the constitution of the state of Montana, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500); and be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days.

History: En. Sec. 14, Ch. 57, L. 1911; re-en. Sec. 5379, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1971.

Amendments

The 1971 amendment substituted "who has not met the residency requirements for voting as provided by the constitution

of the state of Montana, or who is not of the minimum age provided by the constitution of the state of Montana" for "who has not been a resident of this state for one year next preceding said election or who is not twenty-one years of age"; and made minor changes in style.

11-3129. (5391) Publication of report by council, etc.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(h).

CHAPTER 32—COMMISSION-MANAGER FORM OF GOVERNMENT

Section

11-3229. Bribery—false answers concerning qualifications of elector—voting by disqualified person.

11-3248. Compensation of commissioners and mayor.

11-3229. (5428) Bribery—false answers concerning qualifications of elector—voting by disqualified person. Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election, who has not met the residency requirement of the constitution of the state of Montana, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall

be deemed guilty of a misdemeanor, and, upon conviction, shall be fined a sum of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days, or both such fine and imprisonment.

History: En. Sec. 30, Ch. 152, L. 1917; re-en. Sec. 5428, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1971.

Amendments

The 1971 amendment substituted "who has not met the residency requirement of the constitution of the state of Montana" for "who has not been a resident of this

state for one year next preceeding said election, or who is not twenty-one years of age"; and made minor changes in style.

Effective Date

Section 3 of Ch. 166, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

11-3248. (5447) Compensation of commissioners and mayor. The salary of each commissioner may be as follows: The salary of each commissioner shall be as established by ordinance in all classes of cities. The salary of the commissioner acting as mayor may be one and one-half times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965; amd. Sec. 1, Ch. 289, L. 1969; amd. Sec. 1, Ch. 33, L. 1971.

Amendments

The 1969 amendment divided the former first sentence into two sentences; substituted "each formal meeting of record" for "each meeting," "twenty-five dollars (\$25)" for "twenty dollars (\$20)" and made minor changes in the proviso; inserted "For" at the beginning of the

second sentence and substituted "the annual salary * * * (\$2,500)" for "not to exceed forty dollars (\$40.00)."

The 1971 amendment substituted the first sentence after the colon for: "For each formal meeting of record attended, cities or towns with less than twenty-five thousand inhabitants, twenty-five dollars (\$25); provided that no more than one (1) fee shall be paid for any one (1) day. For cities with more than twenty-five thousand inhabitants, the annual salary of each commissioner shall not exceed two thousand five hundred dollars (\$2,500)."

11-3253. (5452) Auditing books of accounts, records, etc.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(i).

CHAPTER 37—OFF-STREET PARKING FACILITIES

Section

11-3717. Interest on bonds—redemption.

11-3717. Interest on bonds—redemption. Revenue bonds shall bear interest, payable annually or semiannually or in part annually and in part semiannually. Prior to the issuance of bonds the commission may fix limitations or restrictions on the payment of interest. Bonds may be callable upon such terms, conditions, and upon such notice as the commission may determine, and upon the payment of the premium fixed by the commission in the proceedings for the issuance of the bonds. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond. The commission may provide for the payment of the principal and interest

of bonds at any place within or without the state of Montana in specified coin or currency of the United States.

History: En. Sec. 17, Ch. 223, L. 1951; of not to exceed six (6) per cent per
amd. Sec. 20, Ch. 234, L. 1971. annum" after "bear interest" in the first
sentence.

Amendments

The 1971 amendment deleted "at a rate

CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS

Section

- 11-3801. City planning boards, county planning boards and city-county planning boards authorized—purpose of act.
- 11-3810. County planning boards and city-county planning boards—members—term of officer members and citizen members.
- 11-3811. Vacancies.
- 11-3812. Citizen members of county planning board and city-county planning board—qualifications.
- 11-3815. Representation of additional cities, towns, or county on existing boards.
- 11-3825. Funds for operation—tax levy authority.
- 11-3830. Jurisdictional area.
- 11-3830.2. Jurisdictional area—county planning board.
- 11-3842. Plats of subdivisions—approval by planning board.
- 11-3842.1. Advice of planning board required.
- 11-3843. Application for approval of plat.
- 11-3844. Determination of whether application for approval should be granted.
- 11-3846. Approval or disapproval of application for plat.
- 11-3847. Fees.
- 11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by city council or board of county commissioners.
- 11-3851. Appeals.

11-3801. City planning boards, county planning boards and city-county planning boards authorized—purpose of act. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county, or any combination thereof, may create a planning board in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials.

Before a county planning board may be created, the board of county commissioners shall, by resolution, give public notice of their intent to create such planning board and of a public hearing thereon, by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than fifteen (15) nor more than

thirty (30) days prior to the date of hearing. A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than sixty (60) days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to section 11-3830 and outside the incorporated limits of each city and town in the county.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971.

paragraph preceding "may create" for "The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly"; and added the third paragraph.

Amendments

The 1971 amendment substituted that portion of the first sentence of the first

11-3810. County planning boards and city-county planning boards—members—term of officer members and citizen members. 1. * * * [Same as parent volume.]

2. County planning boards shall consist of not less than five (5) members appointed by the board of county commissioners.

In the event that any city or town subsequently becomes represented on the county planning board pursuant to section 11-3815, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

3. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be two (2) years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for one (1) or two (2) years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted subsection 2; and redesignated former subsection 2 as subsection 3.

11-3811. Vacancies. Vacancies occurring on the board of official members, and by death or resignation of citizen members, shall be filled by the governing bodies having appointed them for the unexpired term.

Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor. Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners. In the event more than one (1) city is represented on a board the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971.

ty planning" in the first sentence of the second paragraph; and inserted the second sentence of the second paragraph.

Amendments

The 1971 amendment inserted "city-county

11-3812. Citizen members of county planning board and city-county planning board—Qualifications. The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction. The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction, provided, however, that at least two (2) of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction.

History: En. Sec. 12, Ch. 246, L. 1957;
amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5,
Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted the first sentence.

11-3815. Representation of additional cities, towns, or county on existing boards. Any city, county, or town, or any combination thereof wishing to be represented upon an existing planning board, may by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

The membership as well as the jurisdictional area of any board may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

Any city, county, or town which becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of such representation. The governing bodies of any city or county so being represented may levy on all property which is added to the jurisdictional area of an existing board by such representation a tax for planning board purposes under procedures set forth in Title 16, chapter 19, R.C.M. 1947, or Title 11, chapter 14, R.C.M. 1947, whichever is applicable; provided such tax shall not exceed the maximum levy authorized in section 11-3825, R. C. M. 1947.

History: En. Sec. 15, Ch. 246, L. 1957;
amd. Sec. 6, Ch. 273, L. 1971.

as the jurisdictional area" and "and planning" in the second paragraph; added the third paragraph; and made a minor change in phraseology.

Amendments

The 1971 amendment inserted "as well

11-3825. Funds for operation—tax levy authority. 1. After a city council has by ordinance, a board of county commissioners has, by ordinance and resolution, or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

2. * * * [Same as parent volume.]

3. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed two (2) mills for planning board purposes, under procedures set forth in Title 11, chapter 14, R.C.M. 1947, provided such tax shall not exceed the maximum levy authorized in section 11-3825, paragraph 6, R.C.M. 1947.

4. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional areas as established pursuant to section 11-3830, which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax for planning board purposes, under procedures set forth in Title 16, chapter 19, R.C.M. 1947, provided such tax shall not exceed the maximum levy authorized in section 11-3825, paragraph 6, R.C.M. 1947.

5. When a county planning board has been established, the board of county commissioners may create a planning district which shall include that property which lies outside the limits of the jurisdictional area as established pursuant to section 11-3830 or as modified pursuant to section 11-3830.2 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax not to exceed two (2) mills for planning board purposes under procedures set forth in Title 16, chapter 19, R.C.M. 1947.

6. The tax levy for planning board purposes shall be limited as follows: a city of the first class, as defined in section 11-201 of this code, may levy a tax not to exceed two (2) mills; a city of the second class may levy a tax not to exceed four (4) mills; a city of the third class may levy a tax not to exceed six (6) mills and a town may levy a tax not to exceed six (6) mills.

A county of the first class, as defined in section 16-2419 of this code, may levy a tax not to exceed two (2) mills; a county of the second class may levy a tax not to exceed three (3) mills; a county of the third class may levy a tax not to exceed four (4) mills; a county of the fourth class may levy a tax not to exceed five (5) mills and counties of the fifth, sixth and seventh classes may levy a tax not to exceed six (6) mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "a board of county commissioners has, by ordinance and resolution" in subsection 1;

increased the maximum levy from one to two mills and added the proviso in subsection 3; deleted "not to exceed one (1) mill" after "a tax" and added the proviso in subsection 4; added subsections 5 and 6; and made a minor change in phraseology.

11-3830. Jurisdictional area. 1. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

The boundaries of the jurisdictional area can be extended further than four and one-half miles from the limits of the cities only upon petition signed by five per cent (5%) or more of the resident freeholders living in excess of four and one-half miles and not more than twelve miles from

the limits of the cities and within the area desiring to be included within said jurisdictional limits, and upon presentation of said petition to the board of county commissioners. Thereafter, the board of county commissioners must, by resolution, set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition, by publication of notice of time and place of hearing on said petition and resolution, said notice to be published in a newspaper published in the county not less than ten (10) nor more than twenty (20) days prior to the date of said hearing. Thereafter, the said boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners, if disapproved in writing, by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than twelve (12) miles beyond the limits of any city within the jurisdictional area.

2 and 3. * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969.

Amendments

The 1969 amendment substituted "area

involved" for "city" at the end of the first sentence; inserted the first three sentences of the second paragraph, and in the fourth sentence, formerly the second sentence of the first paragraph, substituted "twelve miles" for "four and one-half (4½) miles."

11-3830.2. Jurisdictional area — county planning board. (1) The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to section 11-3830. Should any city or town become represented on the county planning board pursuant to section 11-3815, the jurisdictional area of the county planning board shall be extended to include those cities or towns.

(2) The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

(3) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in this section and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(4) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning

board; is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies and a map showing the boundary lines so agreed upon shall be filed as provided in this section and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971.

Title of Act

An act providing for building restrictions and zoning and subdivision regulations by cities, towns and counties; providing for boards of adjustment and the duties thereof; providing for city, county and city-county planning boards; providing definitions; providing qualifications

for members of boards; providing for a master plan and a jurisdictional area; providing for plats of subdivisions; providing for planning and zoning districts; amending sections 11-2702, 11-3801, 11-3810, 11-3811, 11-3812, 11-3815, 11-3825, 11-3842, 11-3843, 11-3844, 11-3846, 11-3847, 11-3848, 11-3851, R. C. M. 1947, and adding new section 11-3830.2, and amending sections 16-4101, 16-4702, 16-4703, 16-4705, R. C. M. 1947.

11-3842. Plats of subdivisions—approval by planning board. (1)

Where a master plan has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(3) Thereafter a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(4) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments, but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "or the

board of county commissioners may by resolution" in the first sentence of subsection (1); inserted subsection (3); redesignated former subsection (3) as subsection (4); and made minor changes in style.

11-3842.1. Advice of planning board required. The governing body of any city, town or county which has formed a planning board and adopted a comprehensive plan and subdivision regulations pursuant to Title 11, chapter 38, R.C.M., 1947, shall seek the advice of the appropriate

planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

History: En. Sec. 2, Ch. 19, L. 1971.

11-3843. Application for approval of plat. (1) A person desiring the approval of a plat involving lands within the jurisdictional area of a planning board covered by a master plan after the passage of such ordinance or resolution shall submit a written application for a certificate together with a copy of the proposed plat to the planning board having jurisdiction.

(2) When the board tentatively finds that the application conforms to the requirements of the master plan or subdivision ordinance, it shall set a date for a hearing, notify the applicant in writing, and notify by general publication or otherwise any person or governmental unit having a probable interest in the proposed plat.

History: En. Sec. 43, Ch. 246, L. 1957; amd. Sec. 17, Ch. 247, L. 1963; amd. Sec. 10, Ch. 273, L. 1971.

Amendments

The 1971 amendment substituted "juris-

dictional area of a planning board" for "corporate limits of the city" in subsection (1); inserted "after the passage of such ordinance or resolution" in subsection (1); and made minor changes in style and phraseology.

11-3844. Determination of whether application for approval should be granted.

History: En. Sec. 44, Ch. 246, L. 1957; amd. Sec. 18, Ch. 247, L. 1963; amd. Sec. 11, Ch. 273, L. 1971.

Compiler's Notes

Laws 1971, Ch. 273 amended this section but made no change therein. For section, see parent volume.

11-3846. Approval or disapproval of application for plat. After hearing and within forty-five (45) days after application for approval of the plat, the board shall recommend approval or disapproval to the city council or board of county commissioners, whichever is applicable. If the board recommends disapproval, it shall set forth its reasons in a communication to the city council or the board of county commissioners and provide the applicant with a copy.

History: En. Sec. 46, Ch. 246, L. 1957; amd. Sec. 20, Ch. 247, L. 1963; amd. Sec. 12, Ch. 273, L. 1971.

Amendments

The 1971 amendment added "or board

of county commissioners, whichever is applicable" to the end of the first sentence; and inserted "or the board of county commissioners" in the second sentence.

11-3847. Fees. The city council or the board of county commissioners shall establish a uniform schedule of fees proportioned to the cost of checking and verifying the proposed plats. An applicant shall pay the specified fee at the time of filing his application. These fees shall be credited to a fund established by the governing bodies for the planning board.

History: En. Sec. 47, Ch. 246, L. 1957; amd. Sec. 21, Ch. 247, L. 1963; amd. Sec. 13, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "or the board of county commissioners" in the first sentence.

11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by city council or board of county commissioners. After a master plan and an ordinance or resolution containing provisions for subdivision control and the approval of plats have been adopted and a certified copy of the ordinance or resolution has been filed with the county clerk and recorder, the filing and recording of a plat covered by the master plan and an ordinance or resolution shall be without legal effect unless approved by the city council or the board of county commissioners, whichever is applicable.

History: En. Sec. 48, Ch. 246, L. 1957; amd. Sec. 22, Ch. 247, L. 1963; amd. Sec. 14, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "or resolution" in three places; deleted "involving

lands within the corporate limits of the city and" after "recording of a plat"; added "or the board of county commissioners, whichever is applicable" to the end of the section; and made minor changes in phraseology.

11-3851. Appeals. A decision of a city council or by the board of county commissioners rejecting a proposed subdivision plat may be reviewed by the district court upon application for a writ of certiorari. The application shall specify the grounds upon which it alleges the illegality of the action of the city council or the board of county commissioners.

History: En. Sec. 51, Ch. 246, L. 1957; amd. Sec. 23, Ch. 247, L. 1963; amd. Sec. 15, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "or the

board of county commissioners" in the first sentence; and added "or the board of county commissioners" to the end of the second sentence.

CHAPTER 39—URBAN RENEWAL LAW

Section

11-3901. Definitions.

11-3906. Preparation and approval of urban renewal projects and urban renewal plans.

11-3907. Powers.

11-3910. Issuance of bonds.

11-3901. Definitions. The following terms wherever used or referred to in this act, shall have the following meanings, unless a different meaning [is] clearly indicated by the context:

(a) to (p). * * * [Same as parent volume.]

(q) "Urban renewal plan" means a plan, as it exists from time to time for one or more urban renewal areas or for an urban renewal project, which plan (1) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (2) shall be sufficiently complete to indicate, on a yearly basis or otherwise, such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(r). * * * [Same as parent volume.]

(s) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality shall elect to undertake activities on an annual increment basis. In the event of such election the municipality shall present its proposed annual increment activities or undertakings for public approval in keeping with section 11-3906 of this act. Such activity year shall relate to the budget year of the municipality.

History: En. Sec. 1, Ch. 195, L. 1959; Amendments
amd. Sec. 1, Ch. 210, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "is" in the introductory paragraph.

The 1969 amendment, in subdivision (q), inserted "for one or more urban renewal areas or" after "from time to time" and in item (2), "on a yearly basis or otherwise" after "sufficiently complete to indicate"; and added subdivision (s).

11-3906. Preparation and approval of urban renewal projects and urban renewal plans. (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose, and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

(b) to (f). * * * [Same as parent volume.]

(g) If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in section 11-3913, subsection (c), or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of Title 11, chapter 24, or of sections 11-2217 to 11-2221, inclusive, the question of approving the plan and issuing such bonds shall be submitted to a vote of the qualified electors of such municipality in accordance with the provisions of sections 11-2303 to 11-2310, inclusive, at the same election and shall be approved by a majority of those qualified electors voting on such question. Aiding in the planning, undertaking or carrying out of an urban renewal project approved in accordance with this section shall be deemed a single purpose for the issuance of general obligation bonds, and the proceeds of such bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by section 11-3907 which are necessary or proper to complete such project in accordance with the approved plan and any modification

thereof duly adopted by the local governing body. Sections 11-2306 and 11-2307 shall not be applicable to the issuance of such bonds.

(h) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. Such activities need not be limited to contiguous areas; however, such activities shall be confined to the areas as outlined in the urban renewal plan as approved by the municipality in accordance with this act. The yearly activities shall constitute a part of the urban renewal plan and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously. The undertaking of urban renewal activities on a yearly basis shall be designated as a "neighborhood development program" and the financing of such activities shall be approved in accordance with section 11-3906, subsection (g).

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971.

Amendments

The 1969 amendment made a minor change in punctuation in subsection (a); deleted the former first sentence of subsection (g) which read: "Upon the approval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such municipi-

pality and shall be approved by a majority of those taxpayers voting on such question"; and added subsection (h).

The 1971 amendment substituted "qualified electors" for "taxpayers" in two places in the first sentence of subsection (g).

Effective Date

Section 19 of Ch. 158, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

11-3907. Powers. Every municipality shall have all the power necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) to (i). * * * [Same as parent volume.]

(j) To plan and undertake neighborhood development projects consisting of urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this act for carrying out and planning urban renewal projects.

(k) To exercise all or any part or combination of powers herein granted.

(l) Nothing in this act shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines or other public utility facilities excepting water and sewer lines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969.

Amendments

The 1969 amendment inserted subdivi-

sion (j) and designated former subdivisions (j) and (k) as new subdivisions (k) and (l).

11-3910. Issuance of bonds. (a) and (b) * * * [Same as parent volume.]

(c) Bonds issued under this section shall be authorized by resolution

or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(d) to (g) * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 195, L. 1959;
amd. Sec. 11-109, Ch. 264, L. 1963; amd.
Sec. 21, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "not exceeding six per centum (6%) per annum" after "bear interest at such rate or rates" near the middle of subsection (c).

CHAPTER 40—OPEN DITCHES

Section

- 11-4001. Purpose of act.
- 11-4002. Open ditch declared nuisance.
- 11-4003. Powers of governing body.
- 11-4006. Commercial irrigation ditches exempt.

11-4001. Purpose of act. The legislative assembly declares that the control of ditch water in inhabited areas of Montana is affected with the public interest. The purpose of this act is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town. This act shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace and safety of the people of Montana.

Nothing in this act shall be construed as intending to effectuate the abandonment of any valid water right. This act shall be construed merely as a regulation in the public interest so that the diversion, transportation and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this act.

History: En. Sec. 1, Ch. 63, L. 1961;
amd. Sec. 1, Ch. 306, L. 1969.

ditches terminate within the limits of such city or town" at the end of the second sentence of the first paragraph.

Amendments

The 1969 amendment deleted "if such

11-4002. Open ditch declared nuisance. Notwithstanding any provision contained in Title 89, Revised Codes of Montana, 1947, or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an open ditch is a public nuisance, if such city or town declares it to be such nuisance, acting through its governing body.

History: En. Sec. 2, Ch. 63, L. 1961;
amd. Sec. 2, Ch. 306, L. 1969.

ditch" for "unfenced, open ditch that terminates within the limits of such city or town."

Amendments

The 1969 amendment substituted "open

11-4003. Powers of governing body. The governing body of the city or town is hereby given the power:

(1) To investigate the dangerous condition of such ditches within the corporate limits and to declare any such ditch a public nuisance, and

(2). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 63, L. 1961;
amd. Sec. 3, Ch. 306, L. 1969.

Amendments

The 1969 amendment deleted "terminating" before "within the corporate limits" in subdivision (1).

11-4006. Commercial irrigation ditches exempt. This act does not apply to ditches carrying water used for commercial irrigation purposes. However, whenever the public interest or convenience may require, a city or town is hereby authorized and empowered to create a special improvement district for the purpose of building, constructing, acquiring by purchase, and maintaining, devices intended to protect the safety of the public from open ditches carrying water. Such devices or improvements shall provide access to, and shall not be constructed so as to hinder the operation and maintenance of the ditch. The owner or owners of open ditches carrying irrigation or other water, shall not be included in any special improvement district under this act for the purpose of assessment to support the special improvement districts for the installation, repair, or maintenance of any protective devices.

History: En. Sec. 6, Ch. 63, L. 1961;
amd. Sec. 4, Ch. 306, L. 1969.

Amendments

The 1969 amendment added the second through the fourth sentences.

CHAPTER 41—INDUSTRIAL DEVELOPMENT PROJECTS

Section

11-4101. Definition of terms.

11-4101. Definition of terms. As used in this act, unless the context otherwise requires: (1) * * * [Same as parent volume.]

(2) Project shall mean any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing or industrial enterprises, recreation or tourist facilities, and hospitals, long-term care facilities or medical facilities;

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 51, L. 1965; amd.
Sec. 1, Ch. 50, L. 1969; amd. Sec. 1, Ch.
386, L. 1971.

Effective Date

Section 2 of Ch. 50, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

Amendments

The 1969 amendment added "recreation or tourist facilities, and hospitals, long-term care facilities or medical facilities" at the end of subdivision (2).

The 1971 amendment inserted "commercial" in subdivision (2).

Special Purpose Law

This act is designed for special purpose and prevails over and is not limited by general legislation that county not make lease longer than ten years (16-1030),

that county not sell land except at public auction (16-1009), or that county not contract for construction except on public

bidding (16-1803). Fickes v. Missoula County, — M —, 470 P 2d 287.

11-4102. General municipal and county powers.

Constitutionality

Provision for issuance of revenue bonds under this act does not violate Montana constitution article XIII, section 1, since it is done for a public purpose, despite the fact that certain individual associations or corporations may benefit from the legislation. Fickes v. Missoula County, — M —, 470 P 2d 287.

Judicial Review

Where project was entirely within county, court would not consider hypothetical conflict between section 16-101 and provision in this section allowing project partially without county. Fickes v. Missoula County, — M —, 470 P 2d 287.

11-4103. Limited obligation bonds—form and contents, etc.

Constitutionality

This section does not violate Montana constitution article XIII, section 5, since it provides for revenue bonds and does not

create debt or liability within the meaning of article XIII, section 5. Fickes v. Missoula County, — M —, 470 P 2d 287.

11-4107. Use of proceeds of bond sales.

Equipment Acquired

Pollution controls or other equipment useful in industrial project created under this act may be acquired under provisions

of this section from the proceeds of bond sales. Fickes v. Missoula County, — M —, 470 P 2d 287.

11-4108. Taxation of projects.

Constitutionality

This section does not violate provisions of Montana constitution article XII, section 2 against taxing property of county or municipality, since county or municipi-

pality has only trust as opposed to beneficial interest, and taxation is based on use of property. Fickes v. Missoula County, — M —, 470 P 2d 287.

CHAPTER 44—INTERLOCAL CO-OPERATION COMMISSION— IMPROVEMENT OF ESSENTIAL LOCAL GOVERNMENTAL SERVICES

Section

- 11-4401. Declaration of policy and purpose.
- 11-4402. Definitions.
- 11-4403. Establishment of an interlocal co-operation commission.
- 11-4404. Selection of an interlocal co-operation commission.
- 11-4405. Time of appointment.
- 11-4406. Meetings of commission.
- 11-4407. Vacancies—compensation—open meetings—quorum—rules.
- 11-4408. Considerations in preparation of proposals.
- 11-4409. Comprehensive program.
- 11-4410. Recommendations to implement program.
- 11-4411. Consideration of property and debts.
- 11-4412. Public hearings on proposed program.
- 11-4413. Procedure for making recommendations.
- 11-4414. Additional powers and duties.
- 11-4415. Appropriations.
- 11-4416. Term of commission.

11-4401. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of the state of Montana to provide for the residents

of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand, and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

(2) It is the purpose of this act to provide a method whereby the residents of local areas in Montana may propose local solutions to these common problems in order that proper growth and development of the state may be assured and the health and welfare of the people therein secured.

History: En. Sec. 1, Ch. 129, L. 1969.	interlocal co-operation commissions to consider and propose means of improving essential local governmental services in Montana.
Title of Act	
An act providing for the creation of	

11-4402. Definitions. As used in this act:

(1) "Commission" means an interlocal co-operation commission established pursuant to section 3 [11-4403] of this act.

(2) "Principal city" means the city having the largest population in the county under consideration according to the latest federal decennial census.

(3) "Unit of local government" means a county, city or town.

History: En. Sec. 2, Ch. 129, L. 1969.

11-4403. Establishment of an interlocal co-operation commission. An interlocal co-operation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal co-operation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities and towns having any jurisdiction in the county under consideration. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the clerk and recorder of the county and an interlocal co-operation commission shall be deemed to be authorized.

(2) A petition requesting the establishment of an interlocal co-operation commission shall be signed by at least ten (10) per cent of the qualified voters within the county registered for the last preceding general election and shall be filed with the clerk and recorder of the county.

Upon receipt of such a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures thereon. Within thirty (30) days following receipt of such petition, the clerk and recorder shall transmit the same to the board of county commissioners and to the governing body of all cities and towns having any jurisdiction in the county together with his certificate as to the sufficiency thereof and an interlocal co-operation commission shall be deemed to be authorized.

Only one (1) commission may be established in a county at any one time.

History: En. Sec. 3, Ch. 129, L. 1969.

11-4404. Selection of an interlocal co-operation commission. (1) Any interlocal co-operation commission established pursuant to this act shall consist of members to be selected as follows:

- (a) Four (4) members selected by the county commissioners.
- (b) Four (4) members appointed by the mayor of the principal city and confirmed by the governing body of the city.
- (c) One (1) member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town.
- (d) One (1) member, who shall be chairman of the interlocal co-operation commission, selected by the other members of the commission at their initial meeting.

(2) Each member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

(3) No member shall be an official or employee of any unit of local government.

History: En. Sec. 4, Ch. 129, L. 1969.

11-4405. Time of appointment. The members of the interlocal co-operation commission shall be appointed within sixty (60) days after the commission is authorized.

History: En. Sec. 5, Ch. 129, L. 1969.

11-4406. Meetings of commission. (1) Not later than eighty (80) days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners.

(2) At the first meeting of the commission, one (1) of the members appointed by the board of county commissioners shall be designated by that body to serve as temporary chairman. As its first official act, the commission shall select a chairman from outside its own membership.

(3) Further meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the members of the commission.

History: En. Sec. 6, Ch. 129, L. 1969.

11-4407. Vacancies—compensation — open meetings — quorum — rules. (1) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the member he replaces.

(2) Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

(3) All meetings of the commission shall be open to the public.

(4) A majority of the members of the commission shall constitute a quorum for the transaction of business.

(5) Each member shall have one (1) vote. A favorable vote by a majority of the entire commission shall be necessary for any action permitted by section 13 [11-4413] of this act, but other actions may be by a

majority of those present and voting. Each commission may adopt such other rules for its proceedings as it deems desirable.

History: En. Sec. 7, Ch. 129, L. 1969.

11-4408. Considerations in preparation of proposals. A commission shall consider the various areas included within the county, including areas incorporated as municipalities, unincorporated areas essentially urban in nature, unincorporated areas with both urban and rural characteristics and predominantly rural areas. In the formation of its proposals which can include arrangements for county-wide governmental services and urban area services in both incorporated and unincorporated areas, a commission shall study and take into consideration:

(1) The existing land use within the county, including the location of highways and natural geographic barriers to and routes for transportation, making use, wherever possible, of comprehensive land-use plans prepared for the area by organized planning boards or other reliable surveys;

(2) The need for organized local governmental services, the present cost and adequacy of local governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of alternative courses of action on the cost and adequacy of services and controls in the areas concerned and in adjacent areas;

(3) Population density, distribution and growth, per capita assessed valuation, the likelihood of significant growth in the areas concerned and in adjacent incorporated and unincorporated areas;

(4) The boundaries of existing units of local government;

(5) Maintenance of citizen access to, control of, and participation in local government;

(6) Such other matters as might affect provision of local governmental services on an equitable basis and provide more efficient and economical administration thereof.

History: En. Sec. 8, Ch. 129, L. 1969.

11-4409. Comprehensive program. The commission shall prepare a comprehensive program for the furnishing of local governmental services, on both county-wide and urban areas bases, as it deems desirable.

History: En. Sec. 9, Ch. 129, L. 1969.

11-4410. Recommendations to implement program. In preparing its comprehensive program for furnishing local governmental services, a commission may recommend one or more of the following courses of action:

(1) Performance of one or more services by any existing unit of local government;

(2) Consolidation of specified services by transfer of functions between local units of government, by creation of joint administrative agencies or by contractual agreements;

(3) Consolidation of any existing special service district with one or more other special service districts to perform all of the services provided by any of them;

(4) Creation of a new special service district to perform one or more

services, with provision for the dissolution of any existing special service districts performing like service or services within the proposed boundaries of such new district;

(5) Annexation of unincorporated territory to any existing city or town;

(6) Consolidation of any existing cities and towns with any other existing cities and town;

(7) Consolidation of any cities and towns with the county in which they lie;

(8) Creation of a permanent council of governments, consisting of members of the governing bodies of the units of local government within and including the county concerned;

(9) Creation of a unified government for the entire county vested with (a) any and all powers which cities are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana, and (b) any and all powers which counties are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana.

(10) Any other change it considers desirable involving creation, dissolution, or consolidation of units of local government in the county under consideration, or involving alteration of their boundaries, powers, and responsibilities, consistent with provisions of the constitution of the state of Montana.

History: En. Sec. 10, Ch. 129, L. 1969.

11-4411. Consideration of property and debts. (1) The commission shall determine the value and amount of all property used in performing any local governmental service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected by its comprehensive program for both urban area services and county-wide services and shall determine and provide in its proposed program for assumption or equitable adjustment of such property and debts of each unit of local government affected.

History: En. Sec. 11, Ch. 129, L. 1969.

11-4412. Public hearings on proposed program. Within three (3) years after the date of its organization, the commission shall complete the preparation of its proposals for the provision of both urban area services and county-wide services and shall provide for adequate publication and explanation of its program. Notice of hearings shall be published once each week for at least two (2) weeks preceding a hearing, in at least one (1) newspaper of general circulation in the county. The notice shall state the time and place of the hearing.

History: En. Sec. 12, Ch. 129, L. 1969; Amendments
amd. Sec. 1, Ch. 70, L. 1971.

The 1971 amendment extended the time for the preparation of proposals from two years to three years after organization.

11-4413. Procedure for making recommendations. After public hearing, the commission shall submit proposals contained in its comprehensive program for action as follows:

(1) If the comprehensive plan of the commission includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district, a procedure for which is provided by law upon petition by the people and an election, the commission shall make public its proposal or proposals to the people in the area or areas affected.

(2) If the comprehensive plan includes any change, alteration, inter-local agreement, consolidation, dissolution, or annexation with respect to any unit of local government or special district which can be carried into effect under existing law by action of the governing bodies of the units affected, the commission shall recommend the necessary action to the governing body or bodies of the units of government concerned.

(3) If the comprehensive plan includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district which necessitates enabling legislation or amendments to the general laws or constitution of the state of Montana, the commission shall make such recommendation or recommendations to the ensuing legislative assembly.

History: En. Sec. 13, Ch. 129, L. 1969.

11-4414. Additional powers and duties. A commission shall have the following additional powers and duties:

(1) To contract and co-operate with other agencies, public or private as it considers necessary for the rendition and affording of such services, facilities, studies and reports to the commission as will best assist it to carry out the purposes for which the commission was established. Upon request of the chairman of the commission, all state agencies and all counties and other units of local government, and the officers and employees thereof, shall furnish the commission such information as may be necessary for carrying out its functions which may be available to or procurable by such agencies or units of government.

(2) To consult and retain such experts, and to employ such executive, clerical and other staff, as, in the commission's judgment, may be necessary.

(3) To accept and expend moneys from any public or private source, including the federal government. All moneys received by the commission shall be deposited with the county treasurer in the county. The county treasurer is authorized to disburse funds of the commission on its order.

(4) To do any and all other things as are consistent with and reasonably required to perform its functions under this act.

History: En. Sec. 14, Ch. 129, L. 1969.

11-4415. Appropriations. The units of local government within the county under consideration and the county may appropriate funds for the necessary expenses of the commission.

History: En. Sec. 15, Ch. 129, L. 1969.

11-4416. Term of commission. All commissions shall terminate five (5) years from the date of their establishment. However, a commission,

upon completion of its duties, may terminate earlier by a vote of three-fourths ($\frac{3}{4}$) of the members favorable to such earlier termination.

History: En. Sec. 16, Ch. 129, L. 1969; amd. Sec. 2, Ch. 70, L. 1971.

Amendments

The 1971 amendment extended the time specified in the first sentence from four years to five years after establishment.

Separability Clause

Section 17 of Ch. 129, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 18 of Ch. 129, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 26, 1969.

REVISED CODES OF MONTANA

VOLUME 2

Part 1

1971 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 2 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2
(PART 1) THROUGH VOLUME 478, PACIFIC
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NEW LAWS IN VOLUME 2 (Part 1)

For index see pocket supplement to Replacement Volume 9

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12-201. (3) Laws, when retroactive.

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12-345. Adoption of Replacement Volume One, Part 2, and Replacement Volume Two, Parts 1 and 2. The Second Replacement of Part 2 of Volume Number 1 and Replacement Volume Number 2 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the title and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 8, L. 1969.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana the Second Replacement of Part 2 of

Volume Number 1 and Replacement Volume Number 2 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes.

12-346. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any en-

actment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 8, L. 1969.

the act should be in effect from and after its passage and approval. Approved January 29, 1969.

Effective Date

Section 3 of Ch. 8, Laws 1969 provided

12-347. Adoption of Replacement Volume Four, Part 1, and Replacement Volume Eight. The Second Replacement of Part 1 of Volume Number 4 and Replacement Volume Number 8 of the R.C.M. 1947, as published by the publishers and distributors of said R.C.M. 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the R.C.M. 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the R.C.M. 1947, as included in the original compilation of the R.C.M. 1947.

History: En. Sec. 1, Ch. 207, L. 1971.

the second replacement of Part 1 of Volume Number 4 and Replacement Volume Number 6 of the R.C.M. 1947, as published by the publishers and distributors of said codes; and providing an effective date.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana

12-348. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 207, L. 1971.

the act should be in effect from and after its passage and approval. Approved March 4, 1971.

Effective Date

Section 3 of Ch. 207, Laws 1971 provided

CHAPTER 4—COMMISSION ON UNIFORM STATE LAWS

Section

12-404. Duties of commissioners.

12-404. Duties of commissioners. Each commissioner shall attend the meeting of the national conference of commissioners on uniform state laws, and both in and out of such national conference shall do all in his power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable; said commission shall report as provided in section 2 [82-4002] of this act. It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

History: En. Sec. 4, Ch. 175, L. 1945; amd. Sec. 8, Ch. 93, L. 1969.

section 82-4002 for a former provision requiring a report on the commission's transactions and its advice and recommendations to be made to the legislature at each regular session.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of

TITLE 13—CONTRACTS

CHAPTER 2—PARTIES TO CONTRACT

13-204. (7472) When contract for benefit of third person, etc.

Employment Contract

Employee was not third-party beneficiary, within the meaning of statute, of contract between his employer and United States providing that employer should at all times be fully responsible for and exercise reasonable precaution for health and safety of his employees engaged in

performance of work under contract; hence employee was not entitled to maintain action for employer's breach of safety clauses in the absence of express promise in contract to pay damages in addition to employee's rights to workmen's compensation. *Hensley v. United States*, 279 F Supp 548.

CHAPTER 3—CONSENT

13-308. (7480) Actual fraud, acts constituting.

Material Misrepresentations

Broker's statement that laundromat grossed \$3,000 a month, was worth \$37,000, and "looks like a real good deal" did not establish material misrepresentations constituting fraud and entitling purchaser to rescind sale contract, in view of evidence that, although open less than thirty days a month, business did gross \$100 a day and that seller had paid \$30,000 for business and added \$4,000 of improvements; in the absence of corroboration, buyer's claim that broker also told him business netted \$1,000 a month was not basis for rescission. *Young v. Handrow*, 151 M 310, 443 P 2d 9.

One Party in Superior Position

Record disclosing that buyer of real estate who was real estate broker and mineral dealer, knowledgeable in legal

affairs, titles and values of property and who handled drafting of contract, was in superior position as compared to seller who was almost illiterate, weak-minded and an irresponsible drinker, and who took no part in drafting contract, was sufficient to raise legal question of fraud on grounds of gross inadequacy of consideration and undue influence. *Rock v. Birdwell*, 149 M 449, 429 P 2d 634.

Promise Must Be Made Without the Intent To Perform

Allegation that executive vice-president of bank promised to find purchaser for defendant's corporation did not support claim of fraud under this section since mere making of promise which promisor fails to keep is not actionable fraud. *Galatin Trust & Savings Bank v. Henke*, 154 M 170, 461 P 2d 448.

13-309. (7481) Constructive fraud.

Concealment of Facts

Restaurant owner's withholding from potential buyers of information that she had received warning from state board of health concerning unsatisfactory condition of water supply and sewage disposal systems and that correction of difficulty was necessary to meet board's standards was fraudulent, the concealment being in the nature of a constructive fraud. *Russell v. Russell*, 152 M 461, 452 P 2d 77.

Deed from Mother to Son

Constructive trust would not be imposed on lands deeded son by aged mother in absence of evidence to show that son gained land by accident, mistake, undue

influence, violation of trust or other wrongful act or by constructive fraud as defined in statute. *Bodine v. Bodine*, 149 M 29, 422 P 2d 650.

Deficiency in Amount of Land Sold

Sale of land later shown to consist of fewer acres than represented constituted constructive fraud entitling buyer to rescission or damages under statute even though buyer, experienced in real estate transactions, failed to ascertain the true number of acres, and even though the seller's representations were honest mistake, not intended to deceive anyone. *Hardin v. Hill*, 149 M 68, 423 P 2d 309.

CHAPTER 6—CREATION OF CONTRACTS—ORAL AND WRITTEN

13-603. (7516) Implied contract defined.**Service Contract**

Evidence that it was understood plaintiff should be paid for her services and that plaintiff maintained a detailed record of services and expenses, even though in-

cluding contrary indications, was sufficient under this section to support plaintiff's claim under an implied contract. Cartwright v. Joyce, — M —, 473 P 2d 515.

13-606. (7519) What contracts must be in writing.**Estoppel**

Promisor was estopped from raising statute of frauds as defense to action by promisee under oral agreement to divide equally income received from soil bank payments for eight-year period in view of evidence showing glaring inconsistencies in promisor's position. Daley v. Daley, 150 M 432, 436 P 2d 88.

upon being fired, since extension of time was not contemplated in the original contract; fact that employee had worked seven weeks also removed contract from bar of statute under doctrine of part performance. Fox v. Fifth West, Inc., 153 M 95, 454 P 2d 612.

Sale of Stock

In action for breach of contract trial court improperly refused to direct verdict for defendant seller since oral contract for sale of stock in ranch corporation was invalid under this section and equitable estoppel was not applicable since there was no language amounting to representation or concealment of material facts by seller. Mueller v. Svejkskovsky, 153 M 416, 458 P 2d 265.

Extension of Contract Period

Where employer had been awarded construction contract to be completed in 360 days and hired employee under oral agreement almost immediately thereafter, fact that contract was later amended resulting in an extension of time to correct construction error did not make it invalid under this section, and therefore did not affect employee's right to recover salary

13-607. (7520) Effect of written contracts.**Parol Evidence Not Allowed**

Trial court's finding based upon oral testimony admitted at trial was error since such oral testimony varied terms of writ-

ten contract and was thus inadmissible under this section. Davison v. Casebolt, 154 M 125, 461 P 2d 2.

CHAPTER 7—INTERPRETATION OF CONTRACTS

13-704. (7529) Intention to be ascertained from language.**Verbal Clarity**

Clause in disability insurance policy which provided that benefits were payable only in cases involving continuous and total disability within 30 days of date of accident preventing performance of every duty pertaining to insured's occupation precluded insured from recovering bene-

fits under policy where he had returned to work and was able to perform part of his duties since, under this section, language of contract governs its interpretation if language is clear and explicit and, as matter of law, insured did not come within policy coverage. Nelson v. Combined Ins. Co. of America, — M —, 467 P 2d 707.

13-705. (7530) Interpretation of written contracts.**Parol Evidence Admissible**

Provisions in real estate sale contract that time was of the essence and that payments could be made on or before January 15 of each year created ambiguity sufficient that when vendee accelerated

payment and made full payment to escrow agent, vendor's action for breach of contract could not be dismissed without hearing parol evidence to determine intention of the parties. Kielmann v. Mogan, — M —, 478 P 2d 275.

13-708. (7533) Several contracts—when taken together.**Contract and Bond**

Subcontractor's agreement with con-

tractor and bond covering subcontractor were construed together in suit by con-

tractor on subcontractor's bond. *Carl Weissman & Sons, Inc. v. St. Paul Fire & Marine Ins. Co.*, 152 M 291, 448 P. 2d 740.

13-710. (7535) Words to be understood in usual sense.

"Trailer"

"Trailer" as used in restrictive covenant against their use was construed to refer

to a type of structure and not the mobility of that structure. *Timmerman v. Gabriel*, — M —, 470 P 2d 528.

13-713. (7538) Contracts explained by circumstances.

Contract of Sale

Substantial credible extrinsic evidence warranted resolution of ambiguity concerning grazing permits in real estate sales contract in favor of buyers who were re-

peatedly assured during final negotiations that permits would be transferred to them as part of deal. *Dooling v. Casey*, 152 M 267, 448 P 2d 749.

13-717. (7542) Contract—partly written and partly printed, etc.

Insurance Policy

Stamped phrase "Double Indemnity" appearing on face of insurance policy must be interpreted in light of rider to

policy to which phrase refers. *Niewoehner v. Western Life Ins. Co.*, 149 M 57, 422 P 2d 644.

13-719. (7544) Inconsistent words rejected.

Contradictory Provisions

In suit by contractor for additional expenses incurred in obtaining suitable gravel to perform road construction contract, contradiction whereby state highway commission on one hand warranted condition of gravel pit but on other hand disclaimed any liability from reliance on

such representations, would be resolved in favor of contractor for reason that contractor was in "take it or leave it" situation and justifiably relied upon commission's warranty. *Haggart Constr. Co. v. State Highway Commission*, 149 M 422, 427 P 2d 686.

13-720. (7545) Words to be taken most strongly against whom.

Option in Lease

Agricultural tenant was not entitled to exercise option to buy contained in lease of land after expiration of lease, even though holding over, in light of statute

providing that uncertainties in contract be interpreted against plaintiff-promisor, causing uncertainty to exist. *Miller v. Meredith*, 149 M 125, 423 P 2d 595.

CHAPTER 8—UNLAWFUL CONTRACTS

13-806. (7558) Restraints upon legal proceedings.

Arbitration Provision

On application for writ of supervisory control, district court would be required to take jurisdiction of claim by contractor for additional work performed on contract with drainage district, notwithstanding

decision for drainage district under arbitration clause, since arbitration cannot be final as to questions of law. *State ex rel. Cave Constr. Co. v. District Court*, 150 M 18, 430 P 2d 624.

CHAPTER 9—EXTINCTION OF CONTRACTS—RESCISSION—ALTERATION—CANCELLATION

13-903. (7565) When party may rescind.

Failure of Consideration

Under this section, party may rescind contract when consideration for his obligation fails in whole or in part through fault of party as to whom he rescinds,

or if such consideration, before it is rendered to him, fails in material respect from any cause. *Brown v. First Federal Savings & Loan Assn. of Great Falls*, 154 M 79, 460 P 2d 97.

13-905. (7567) Rescission—how effected.**Waiver of Right to Rescind**

In action by motorist, injured by negligence of insured, to recover under insured's policy, insurer impliedly waived right to rescind policy by accepting premium payments from insured and by

paying other claims arising out of the same accident, after insurer had discovered insured's fraudulent misrepresentations in application for policy. *McLane v. Farmers Ins. Exchange*, 150 M 116, 432 P 2d 98.

13-907. (7569) Written contracts—how modified.**Contingent Fee Contract**

A contingent fee contract providing that in event suit was instituted attorney would be entitled to 40 per cent of any

sums recovered is binding in absence of written contract or executed oral contract varying the original contract. *Gross v. Holzworth*, 151 M 179, 440 P 2d 765.

TITLE 14—CO-OPERATIVES

Chapter

1. Credit unions, 14-143, 14-145, 14-148 to 14-150.
5. Rural Electric and Telephone Co-operative Act, 14-502, 14-521, 14-530.

CHAPTER 1—CREDIT UNIONS

Section

- 14-143. **Directors**
- 14-145. **Supervisory committee.**
- 14-148. **Loans to members.**
- 14-149. **Reserves.**
- 14-150. **Dividends—when declared—how paid.**

14-143. Directors. The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the credit union. Minutes of all such meetings shall be kept. Among other things they shall act upon applications for membership; require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the supervisor, and authorize the payment of the premium or premiums therefor from the funds of the credit union; fill vacancies in the board and in the credit committee until successors elected at the next annual meeting have qualified; have charge of investments other than loans to members; determine from time to time the maximum number of shares that may be held by an individual; subject to the limitations of this act, determine the interest rates on loans and the maximum amount which may be loaned with or without security to any member; subject to such regulations as may be issued by the supervisor, authorize an interest refund to members of record at the close of business on the last day of any dividend period in proportion to the interest paid by them during that dividend period; and provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit committee. The board may appoint an executive committee of not less than three (3) directors to act for it in the purchase and sale of securities, the borrowing of funds, and the making of loans to other credit unions. Such executive committee or a membership officer appointed by the board from among the members of the credit union, other than the treasurer, and assistant treasurer, or a loan officer, may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such committee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require.

History: En. Sec. 14, Ch. 236, L. 1963; amd. Sec. 1, Ch. 213, L. 1971.

Amendments

The 1971 amendment substituted "the last day of any dividend period" and "dividend period" for "December 31" and "that year" in the third sentence, in the clause relating to interest refunds to mem-

bers; inserted a new fourth sentence providing for an executive committee; inserted "Such executive committee or" at the beginning of the fifth sentence; inserted "committee or" before "membership officer" in the latter portion of the fifth sentence; and made minor changes in phraseology.

14-145. Supervisory committee. The supervisory committee shall make or cause to be made, at least semiannually, an examination of the affairs of the credit union, shall make or cause to be made a report of its semi-annual examination to the board of directors; shall make or cause to be made an annual audit, a report of which shall be submitted to the members at the next annual meeting of the credit union; may suspend by a unanimous vote any officer of the credit union, or any member of the credit committee, or of the board of directors, until the next members' meeting, which members' meeting shall be held not less than seven (7) nor more than fourteen (14) days after such suspension and at which meeting such suspension shall be acted upon by the members; and may call by a majority vote a special meeting of the shareholders to consider any violation of this act, the certificate of incorporation or the bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized. Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members shall decide, at a meeting held not less than seven (7) nor more than fourteen (14) days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee. The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two (2) years. As used in this section, the term "passbook" shall include any book, statement of account, or other record setting forth the members' transactions with the credit union.

History: En. Sec. 16, Ch. 236, L. 1963; amd. Sec. 2, Ch. 213, L. 1971.

Amendments

The 1971 amendment changed the exami-

nation provided for by the first clause of the first sentence from quarterly to semiannual; and inserted "a majority vote of" in the second sentence.

14-148. Loans to members. A credit union may loan to members for provident or productive purposes and made subject to the conditions contained in the bylaws. A borrower may repay his loan in whole or in part, during regular business hours on any day the credit union office is open for business and no penalty or minimum charge may be imposed for payments received in advance of schedule or for any loan paid in full prior to the maturity date. Loans to its own directors and to members of its own supervisory or credit committee shall be reported to the directors as hereinafter provided, and such a loan may be made only if:

(1) the loan complies with all lawful requirements under this act with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;

(2) Upon the making of the loan, the aggregate amount of loans outstanding to the borrower will not exceed the total amount of shareholdings in the credit union, not otherwise encumbered or pledged, which are pledged as security for loans to the borrower, or five thousand dollars (\$5,000), whichever is greater;

(3) upon the making of the loan, the aggregate amount of loans outstanding under authority of this paragraph will not exceed twenty per centum (20%) of the unimpaired capital and surplus of the credit union;

(4) the loan is approved by the credit committee after the submission to them by the borrower of a detailed current financial statement on a form prepared by the credit committee, and reported to the board of directors within thirty (30) days of approval, and

(5) the borrower takes no part in the consideration of his application and does not attend any committee meeting while his application is under consideration.

No director or member of the supervisory or credit committee shall endorse for borrowers.

History: En. Sec. 19, Ch. 236, L. 1963; amd. Sec. 3, Ch. 213, L. 1971.

Amendments

The 1971 amendment substituted the third sentence and the numbered subdivisions for a sentence reading "Loans to a director or member of the supervisory or credit committee shall not exceed the

amount of his holdings in the credit union as represented by shares thereof plus the total unencumbered and unpledged shareholdings in the credit union of any member or members pledged as security for the obligation of such director or committee member"; and made minor changes in phraseology and punctuation.

14-149. Reserves. (1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in regulations prescribed under this act, sums in accordance with the following schedule:

(a) ten per centum (10%) of gross income until the regular reserve shall equal seven and one-half per centum ($7\frac{1}{2}\%$) of the total of outstanding loans and risk assets, then

(b) five per centum (5%) of gross income until the regular reserve shall equal ten per centum (10%) of the total of outstanding loans and risk assets. Whenever the regular reserve falls below ten per centum (10%), or seven and one-half per centum ($7\frac{1}{2}\%$) of the total of outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as may be needed to maintain the reserve goals of seven and one-half per centum ($7\frac{1}{2}\%$), or ten per centum (10%).

(2) In addition to such regular reserve, special reserves to protect the interests of members shall be established:

(a) when required by regulation; or

(b) when found by the supervisor, in any special case, to be necessary for that purpose.

History: En. Sec. 20, Ch. 236, L. 1963; amd. Sec. 4, Ch. 213, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

14-150. Dividends—when declared—how paid. After allocations to the required reserves, a credit union may declare a dividend from undivided earnings at the discretion of its board of directors and as its by-laws may provide. Dividends shall be paid on all fully paid shares outstanding at the close of the dividend period, but shares which become fully paid during the dividend period shall be entitled to a proportional part of the dividends calculated from the first day of the month following such payment in full. Dividend credit for a month may be accrued on shares which are or become fully paid up during the first ten (10) days of that month. No dividends shall be paid on shares which are withdrawn during the dividend period.

History: En. Sec. 21, Ch. 236, L. 1963;
amd. Sec. 5, Ch. 213, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

CHAPTER 5—RURAL ELECTRIC AND TELEPHONE CO-OPERATIVE ACT

Section

14-502. Purpose.

14-521. Disposition of property.

14-530. Definitions.

14-502. Purpose. Co-operative, nonprofit, membership corporations may be organized under this act for the following purposes:

(a) For the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, as provided in this act.

(b) * * * [Same as parent volume.]

Corporations organized under this act and corporations which become subject to this act in the manner hereinafter provided are hereinafter referred to as “co-operatives.”

History: En. Sec. 2, Ch. 172, L. 1939;
amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9,
Ch. 7, L. 1971.

provided in this act” at the end of subdivision (a) for “in which electrical current and service are not otherwise available, from existing facilities and plants.”

Amendments

The 1971 amendment substituted “as

DECISIONS UNDER FORMER LAW

Electric Service

In determining that electrical service was available from existing facilities of private company thereby denying co-operative right to supply electric service to potential customer, court relied upon evidence that private company was serving

other customers in area and evidence that distance private company would have to extend its service to supply new customer was less than distance co-operative would have to extend its service to supply same customer. *Montana Power Co. v. Fergus Elec. Co-op*, 149 M 258, 425 P 2d 329.

14-521. Disposition of property. A co-operative may not sell, mortgage, lease or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized at a duly held meeting of members thereof by the affirmative vote of not less than two-thirds ($\frac{2}{3}$) of all the members of the co-operative, and unless the notice of such proposed sale,

mortgage, lease or other disposition or encumbrance shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, or any other provisions of law, the board of trustees of a co-operative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the co-operative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the co-operative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States; provided, further, that the board may upon the authorization of a majority of those members of the co-operative voting at a meeting of the members thereof, sell, lease, or otherwise dispose of all or a substantial portion of its property to another co-operative or foreign corporation doing business in this state pursuant to the act under which the co-operative is incorporated.

History: En. Sec. 21, Ch. 172, L. 1939; amd. Sec. 1, Ch. 17, L. 1971.

Amendments

The 1971 amendment added "or to any other financing sources within the United States" at the end of the first proviso; added the second proviso; and made minor changes in phraseology.

Effective Date

Section 2 of Ch. 17, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 9, 1971.

14-528. Exemption from excise taxes—license fee.

Cross-References

Secretary of state's functions trans-

ferred to department of revenue, sec. 82A-1802.

14-530. Definitions. In this act, unless the context otherwise requires:

(a) "Rural area" as applied to all corporations organized under the provisions of paragraph (a) of section 14-502, means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto, and every incorporated municipality in which ninety-five per cent (95%) or more of the premises are served by an electric co-operative on the effective date of the Territorial Integrity Act of 1971; "rural area" as applied to all corporations organized under the provisions of paragraph (b) of section 14-502, means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of fifteen hundred (1500) persons.

(b) and (c) * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957; amd. Sec. 10, Ch. 7, L. 1971.

Amendments

The 1971 amendment, in subdivision (a), inserted "and every incorporated municipality in which ninety-five per cent * * *

Territorial Integrity Act of 1971," and made a minor change in punctuation.

Repealing Clause

Section 11 of Ch. 7, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 12 of Ch. 7, Laws 1971 read "If a part of this act is invalid, all valid parts that are severable from the invalid part

remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 13 of Ch. 7, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 1, 1971.

TITLE 15—CORPORATIONS

Chapter

22. Montana Business Corporation Act, 15-2202, 15-2226, 15-2236, 15-2272, 15-2285, 15-2290, 15-2295, 15-22-104, 15-22-109, 15-22-110, 15-22-119, 15-22-121, 15-22-122.
23. Montana Nonprofit Corporation Act, 15-2354, 15-2359, 15-2383, 15-2384.
26. Montana Development Credit Corporation Act, 15-2601 to 15-2618.

CHAPTER 22—MONTANA BUSINESS CORPORATION ACT

Section

- 15-2202. Definitions.
15-2226. Meetings of shareholders.
15-2236. Vacancies—removal of directors.
15-2272. Sale of assets other than in regular course of business.
15-2285. Articles of dissolution—tax clearance certificate.
15-2290. Jurisdiction of court to liquidate assets and business of corporation.
15-2295. Decree of involuntary dissolution.
15-22-104. Filing of application for certificate of authority.
15-22-109. Amendment to articles of incorporation of foreign corporation.
15-22-110. Merger of foreign corporation authorized to transact business in this state.
15-22-119. Filing of annual report of domestic and foreign corporations.
15-22-121. Fees for filing documents and issuing certificates.
15-22-122. Miscellaneous charges.

15-2202. Definitions. As used in this act, unless the context otherwise requires, the term:

(a) to (o). * * * [Same as parent volume.]

(p) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

History: En. Sec. 2, Ch. 300, L. 1967;
amd. Sec. 1, Ch. 152, L. 1969.

Amendments

The 1969 amendment added subdivision (p).

15-2204. General powers.

Eminent Domain Power

Legislature, under this section, has empowered utility companies to acquire prop-

erty by eminent domain. Montana Power Co. v. Bokma, 153 M 390, 457 P 2d 769.

15-2210. Renewal of registered name. A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars (\$10). A renewal application may be filed between October 1 and December 31 in each year, and shall extend the registration for the following calendar year.

Compiler's Notes

This section is reprinted to add a dollar sign (\$) omitted in the parent volume.

15-2226. Meetings of shareholders. Meetings of shareholders may be held at such place, either within or without this state, as may be provided

in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-half ($\frac{1}{2}$) of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws.

History: En. Sec. 26, Ch. 300, L. 1967;
amd. Sec. 1, Ch. 308, L. 1969.

Amendments

The 1969 amendment substituted "one-half ($\frac{1}{2}$)" for "one-fourth ($\frac{1}{4}$)" in the third paragraph.

15-2236. Vacancies—removal of directors. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. The entire board of directors may be removed, with or without cause, by a vote of the holders of two-thirds ($\frac{2}{3}$) of the shares then entitled to vote at an election of directors, unless otherwise provided by the articles of incorporation or bylaws; if the corporation has fewer than one hundred (100) shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part.

History: En. Sec. 36, Ch. 300, L. 1967;
amd. Sec. 1, Ch. 309, L. 1969.

thirds ($\frac{2}{3}$)" for "a majority" before "of the shares" and added "unless otherwise provided * * * entitled to vote" to the second sentence of the second paragraph.

Amendments

The 1969 amendment substituted "two-

15-2272. Sale of assets other than in regular course of business. A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares

of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) to (d). * * * [Same as parent volume.]

(e) The shareholders of a corporation may, by a vote of the holders of the number of shares required to change the articles of incorporation of such corporation at a meeting duly called upon not less than thirty (30) days' notice, amend the articles of incorporation to give the board of directors general authority to sell, lease, exchange or otherwise dispose of all, or substantially all, of the property and assets, with or without the good will, of a corporation, upon such conditions, and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by the board of directors.

History: En. Sec. 72, Ch. 300, L. 1967; **Amendments**
amd. Sec. 1, Ch. 125, L. 1969.

The 1969 amendment added subdivision (e).

15-2285. Articles of dissolution—tax clearance certificate. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) to (e). * * * [Same as parent volume.]

No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree, or file any other document by which the term of existence of any corporation is terminated except a decree of involuntary dissolution in an action brought by the attorney general, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the state board of equalization and files with said court, clerk of the district court, or secretary of state as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the state board of equalization is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

History: En. Sec. 85, Ch. 300, L. 1967;
amd. Sec. 2, Ch. 152, L. 1969.

Amendments

The 1969 amendment deleted the sub-

division designation "(f)" from the last paragraph and inserted "except a decree * * * by the attorney general" after "is terminated" in the first sentence.

15-2290. Jurisdiction of court to liquidate assets and business of corporation. The district courts shall have full power to liquidate the assets and business of a corporation:

(a) (1) to (4). * * * [Same as parent volume.]

(b) (1) and (2). * * * [Same as parent volume.]

(c) and (d). * * * [Same as parent volume.]

(e) Upon filing a verified petition and/or application by a stockholder, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 300, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or shareholders legally entitled to the same.

Proceedings under clause (a), (b), (c), or (e) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally. .

History: En. Sec. 90, Ch. 300, L. 1967;
amd. Sec. 1, Ch. 174, L. 1969.

any property, property rights or other assets, including money, which might be found after the conclusion of said pending proceedings."

The effective date of chapter 300, Laws of 1967, referred to in subdivision (e), was December 31, 1968.

Compiler's Notes

Section 3 of Chapter 174, Laws 1969 provided: "This act shall not apply to and shall not affect the rights and interests in any dissolved corporation as to which dissolution proceedings were, at the effective date of Chapter 198, Laws of Montana 1967 [December 31, 1968], being continued under the supervision of a court having jurisdiction, except as to

Amendments

The 1969 amendment inserted subdivision (e) and the reference to it in the following paragraph.

15-2295. Decree of involuntary dissolution. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease, or, in the event the proceedings is [are] under subdivision (e) of section 15-2290, R. C. M. 1947, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or for stockholders of such corporation.

History: En. Sec. 95, Ch. 300, L. 1967;
amd. Sec. 2, Ch. 174, L. 1969.

date of Chapter 198, Laws of Montana 1967 [December 31, 1968], being continued under the supervision of a court having jurisdiction, except as to any property, property rights or other assets, including money, which might be found after the conclusion of said pending proceedings."

Compiler's Notes

Section 3 of Chapter 174, Laws 1969 provided: "This act shall not apply to and shall not affect the rights and interests in any dissolved corporation as to which dissolution proceedings were, at the effective

The compiler has inserted the bracketed word "are."

Amendments

The 1969 amendment added "or, in the event * * * stockholders of such corporation."

Effective Date

Section 4 of Ch. 174, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

15-22-104. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto duly certified by manual or facsimile signature by the proper officer of the state or country of incorporation.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this act prescribed:

(1) to (3). * * * [Same as parent volume.]

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state shall be returned to the corporation or its representative.

History: En. Sec. 104, Ch. 300, L. 1967; amd. Sec. 3, Ch. 152, L. 1969.

Amendments

The 1969 amendment substituted "certified" for "authenticated" in the first sentence.

15-22-109. Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within sixty (60) days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state.

History: En. Sec. 109, Ch. 300, L. 1967; amd. Sec. 4, Ch. 152, L. 1969.

Amendments

The 1969 amendment substituted "certified" for "authenticated."

15-22-110. Merger of foreign corporation authorized to transact business in this state. Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within sixty (60) days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

History: En. Sec. 110, Ch. 300, L. 1967; amd. Sec. 5, Ch. 152, L. 1969.

Amendments

The 1969 amendment substituted "certified" for "authenticated."

15-22-117. Transacting business without certificate of authority.

DECISIONS UNDER FORMER LAW

License Tax Delinquency

Neither foreign corporation which created and assigned accounts receivable before complying with laws of state nor foreign corporation to which accounts receivable were assigned had right of enforcement until assignor paid license taxes under former statute providing that no contract of a foreign corporation is enforceable during the period of delinquency

in payment of its fees and licenses, and although a subsequent compliance with statute would remove bar of nonenforceability, removal would not relate back to date of original delinquency and would not bar superior rights of others that accrued during period of delinquency. *Manufacturers Acceptance Corp. v. Krsul*, 151 M 28, 438 P 2d 667.

15-22-119. Filing of annual report of domestic and foreign corporations. Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the fifteenth day of April of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the fifteenth day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to the fifteenth day of April such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of this act, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this act and returned to the secretary of state within thirty days from the date on which it was mailed to the corporation by the secretary of state.

History: En. Sec. 119, Ch. 300, L. 1967;
amd. Sec. 1, Ch. 6, L. 1971.

Amendments

The 1971 amendment substituted "fifteenth day of April" for "first day of March" wherever it appears in the section.

15-22-121. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(a) and (b). * * * [Same as parent volume.]

(c) Filing restated articles of incorporation and issuing a restated certificate of incorporation, twenty dollars (\$20).

(d) to (l). * * * [Same as parent volume.]

(m) Filing articles of dissolution and issuing a certificate of dissolution, five dollars (\$5).

(n) to (t). * * * [Same as parent volume.]

History: En. Sec. 121, Ch. 300, L. 1967;
amd. Sec. 6, Ch. 152, L. 1969.

Amendments

The 1969 amendment inserted "and is-

uing a restated certificate of incorporation" in subdivision (c) and "and issuing a certificate of dissolution" in subdivision (m).

15-22-122. Miscellaneous charges. The secretary of state shall charge and collect:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, fifty cents (\$.50) per page and two dollars (\$2) for the certificate and affixing the seal thereto.

(b) * * * [Same as parent volume.]

History: En. Sec. 122, Ch. 300, L. 1967;
amd. Sec. 1, Ch. 185, L. 1971.

Amendments

The 1971 amendment increased the per page charge specified in subdivision (a) from 35¢ to 50¢.

15-22-126. Penalties imposed upon officers and directors.

DECISIONS UNDER FORMER LAW

Liability of Officers and Directors

Under former statute providing for liability of directors for failure to file required annual report, directors were liable to creditors only for debts contracted during period corporation was in default in filing annual report but if report when filed was false, officers and not directors were liable to creditors for damages re-

sulting therefrom; false report was not same as no report, nor should court refrain from enforcing annual report requirements because statute did not require sufficient facts to apprise public of corporation's financial condition. *Mountain States Supply v. Mountain States Feed & Livestock Co.*, 149 M 198, 425 P 2d 75.

15-22-128. Secretary of state to notify corporation of expiration of existence. It shall be the duty of the secretary of state to notify every corporation organized after July 1, 1929, not less than three (3) months, nor more than six (6) months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

Compiler's Notes

This section is reprinted to correct an error in the parent volume.

CHAPTER 23—MONTANA NONPROFIT CORPORATION ACT

Section

- 15-2354. Jurisdiction of court to liquidate assets and affairs of corporation.
- 15-2359. Decree of involuntary dissolution.
- 15-2383. Fees for filing documents and issuing certificates.
- 15-2384. Miscellaneous charges.

15-2354. Jurisdiction of court to liquidate assets and affairs of corporation. Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

(a) (1) to (5). * * * [Same as parent volume.]

(b) (1) and (2). * * * [Same as parent volume.]

(c) and (d). * * * [Same as parent volume.]

(e) Upon filing a verified petition and/or application by a member, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 198, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets,

including money, which have not been distributed to creditors and/or members legally entitled to the same.

Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

History: En. Sec. 54, Ch. 198, L. 1967; **Amendments**
amd. Sec. 1, Ch. 62, L. 1969.

The 1969 amendment inserted subdivision (e).

15-2359. Decree of involuntary dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease, or, in the event the proceedings is [are] under subdivision (e) of section 15-2354, R. C. M. 1947, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or members of such corporation.

History: En. Sec. 59, Ch. 198, L. 1967;
amd. Sec. 2, Ch. 62, L. 1969.

Amendments

The 1969 amendment added “, or, in the event * * * of such corporation.”

Compiler's Notes

The compiler has inserted the bracketed word “are.”

Effective Date

Section 3 of Ch. 62, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 21, 1969.

15-2383. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(a) to (g). * * * [Same as parent volume.]

(h) Filing articles of dissolution and issuing a certificate of dissolution, five dollars (\$5).

(i) to (o). * * * [Same as parent volume.]

History: En. Sec. 83, Ch. 198, L. 1967;
amd. Sec. 7, Ch. 152, L. 1969.

Effective Date

Section 8 of Ch. 152, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

Amendments

The 1969 amendment inserted “and issuing a certificate of dissolution,” in subdivision (h), and deleted former subdivisions (p) and (q), for text of which see parent volume.

15-2384. Miscellaneous charges. The secretary of state shall charge and collect:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, fifty cents (\$.50) per page and two dollars (\$2) for the certificate and affixing the seal thereto.

(b) * * * [Same as parent volume.]

History: En. Sec. 84, Ch. 198, L. 1967;
amd. Sec. 2, Ch. 185, L. 1971.

Amendments

The 1971 amendment increased the per page charge specified in subdivision (a) from 35¢ to 50¢.

CHAPTER 26—MONTANA DEVELOPMENT CREDIT
CORPORATION ACT

Section

- 15-2601. Purpose.
- 15-2602. Definitions.
- 15-2603. Incorporators—general powers—capital stock—articles of incorporation.
- 15-2604. Certificate of incorporation.
- 15-2605. Amendment of articles of incorporation.
- 15-2606. Board of directors.
- 15-2607. Powers of stockholders and members.
- 15-2608. First meeting of corporation.
- 15-2609. Stock ownership and limitations.
- 15-2610. Members, and limitation and apportionment of loans by members.
- 15-2611. Withdrawal of membership.
- 15-2612. Surplus.
- 15-2613. Deposit of funds.
- 15-2614. Control—supervision—reports.
- 15-2615. Duration.
- 15-2616. Termination.
- 15-2617. Credit of state not pledged.
- 15-2618. Application to sections of Revised Codes of Montana 1947.

15-2601. Purpose. The purposes of the corporation shall be to promote, stimulate, develop, and advance the business prosperity and economic welfare of the state of Montana and its citizens; to encourage and assist through loans, investments, or other business transactions, in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; and so to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standards of living of the citizens of this state; similarly, to co-operate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

In furtherance of such purposes and in addition to the powers conferred on business corporations by the provisions of Title 15 of the Revised Codes of Montana 1947, the corporation shall, subject to the restrictions and limitations herein contained, have the additional powers and functions enumerated herein.

History: En. Sec. 1, Ch. 128, L. 1969.

Title of Act

An act to authorize the incorporation of

development credit corporations for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state.

15-2602. Definitions. As used in this act, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "Corporation": A Montana development credit corporation created under this act.

(2) "Financial institution": Any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(3) "Member": Any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this act, upon its call, and in accordance with the provisions of this act.

(4) "Board of directors": The board of directors of the corporation created under this act.

(5) "Loan limit": For any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this act.

History: En. Sec. 2, Ch. 128, L. 1969.

15-2603. Incorporators—general powers—capital stock—articles of incorporation. Nine (9) or more persons, a majority of whom shall be residents of this state, who may desire to create a development credit corporation under the provisions of this act, for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated in the following manner: such persons shall by articles of incorporation filed in the manner prescribed in Title 15 of the Revised Codes of Montana 1947, under their hands and seals, set forth:

(1) The name of the corporation, which shall include the words "Development Credit Corporation of Montana."

(2) The location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors.

(3) The purpose for which the corporation is founded, which shall include the following:

(a) To elect, appoint, and employ officers, agents, and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided, that the corporation shall not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association or trust, or in any other manner.

(b) To borrow money from the members, nonmember persons, firms or corporations, and state and federal agencies, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided, that no loan to the corporation shall be secured in any

manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(c) To make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith: provided, however, that the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.

(d) To participate with any duly authorized private lending agency, and city, state, and federal governmental lending agencies in the making of loans.

(e) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(f) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.

(g) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(h) To mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired pursuant to the powers contained in paragraphs (e), (f), or (g), as security for the payment of any part of the purchase price thereof.

(i) To co-operate with and avail itself of the facilities of the state planning and economic development department and any similar governmental agencies; and to co-operate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof.

(j) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency whether state, federal, or municipal.

(k) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

(4) The articles of incorporation shall set forth the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, and the amount of capital stock with which it will commence business and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(5) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation shall be in accordance with the provisions of Title 15, Revised Codes of Montana 1947, so far as consistent with this act.

History: En. Sec. 3, Ch. 128, L. 1969.

15-2604. Certificate of incorporation. Before the articles of incorporation shall become effective, the secretary of state must issue a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon, the persons signing the articles and their associates and their successors and assigns, shall become a body politic and corporate, by the name specified in the articles of incorporation, subject to amendment and dissolution as provided in this act. The incorporators shall have the authority and shall perform such acts and things as required by the provisions of this act, as set forth in section 3 [15-2603] thereof.

History: En. Sec. 4, Ch. 128, L. 1969.

15-2605. Amendment of articles of incorporation. The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds (2/3) of the votes to which the stockholders shall be entitled and two-thirds (2/3) of the votes to which the members shall be entitled; provided that no amendment which is inconsistent with the general purposes expressed herein, or which eliminates or curtails the obligation of the corporation to make reports as provided in section 14 [15-2614], shall be made without amendment of this act; and provided, further, that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position, of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided in section 11 [15-2611], or affects a member's voting rights as provided in section 7 [15-2607], shall be made without the consent of each member affected

by such amendment. Within thirty (30) days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and the due adoption thereof, shall so far as consistent with this act be submitted, as prescribed in Title 15, Revised Codes of Montana 1947, to the secretary of state, who shall examine them and if he finds that they conform to the requirements of this act, shall so certify and endorse his approval thereon. Thereupon, the amended articles of incorporation shall be filed in the office of the secretary of state and no such amendment shall take effect until such amended articles of incorporation shall have been filed as aforesaid.

History: En. Sec. 5, Ch. 128, L. 1969.

15-2606. Board of directors. The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall consist of such number, not less than nine (9), as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The directors need not be stockholders or members in the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies in the office of director. The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation, or, if no annual meeting shall be held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting, or at each special meeting held in lieu of the annual meeting, the stockholders shall elect the directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers.

History: En. Sec. 6, Ch. 128, L. 1969.

15-2607. Powers of stockholders and members. The stockholders and the members of the corporation shall have the following powers of the corporation: (a) to determine the number of and elect directors as provided in section 6 [15-2606] hereof; (b) to make, amend, and repeal bylaws; (c) to amend the articles of incorporation as provided in section 5 [15-2605]; (d) to exercise such other of the powers of the corporation as may be conferred on the stockholders and the members by the bylaws.

As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and except as otherwise herein provided, such matters

shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

Each stockholder shall have one (1) vote, in person or by proxy for each share of capital stock held by him, and each member shall have one (1) vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars (\$1,000.00) shall have one additional vote, in person or by proxy, regardless of the number of shares owned, for each additional one thousand dollars (\$1,000.00) which such member is authorized to have outstanding on loans to the corporation at any one time as determined under paragraph three (3) (b) of section 10 [15-2610].

History: En. Sec. 7, Ch. 128, L. 1969.

15-2608. First meeting of corporation. The first meeting of the corporation shall be called by a notice signed by three (3) or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five (5) days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

At such first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Five (5) of the incorporators shall be a quorum for the transaction of business.

History: En. Sec. 8, Ch. 128, L. 1969.

15-2609. Stock ownership and limitations. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) All domestic corporations organized for the purpose of carrying on business within this state including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the state, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;

(2) All financial institutions are hereby authorized to become members of the corporation by making loans to the corporation as provided herein;

(3) A financial institution which does not become a member of the corporation shall not be permitted to acquire any share of the capital stock of the corporation;

(4) Each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten per cent (10%) of the loan limit of such member. The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

History: En. Sec. 9, Ch. 128, L. 1969.

15-2610. Members, and limitation and apportionment of loans by members. Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by the board. The application for membership will specify the loan limit which shall be subject to call of the corporation, but in no case shall the amount so specified exceed the limit provided for in this act. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation to its members would exceed ten (10) times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Twenty per cent (20%) of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

(b) The following limit, to be determined as of the time such member becomes a member on the basis of the most recent year-end balance sheet of such member at the close of its fiscal year immediately preceding its application for membership: Three per cent (3%) of the capital and surplus of commercial banks and trust companies; one per cent (1%) of the

total outstanding loans made by a building and loan association; two per cent (2%) of the capital and unassigned surplus of stock insurance companies; and such comparable limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to paragraph three (3) (a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(5) All loans to the corporation by member shall be evidenced by bonds, debentures, notes or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-half of one per cent (.50 of 1%) in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

History: En. Sec. 10, Ch. 128, L. 1969.

15-2611. Withdrawal of membership. Membership in the corporation shall be for the duration of the corporation; provided that—

(a) Upon written notice given to the corporation two (2) years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to the withdrawal of said member.

History: En. Sec. 11, Ch. 128, L. 1969.

15-2612. Surplus. Each year the corporation shall set apart as earned surplus not less than ten per cent (10%) of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one hundred per cent (100%) of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

History: En. Sec. 12, Ch. 128, L. 1969.

15-2613. Deposit of funds. The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

The corporation shall not receive money on deposit.

History: En. Sec. 13, Ch. 128, L. 1969.

15-2614. Control—supervision—reports. The corporation shall be subject to the examination of the state superintendent of banks, and shall make reports of its condition not less than annually to said superintendent, who in turn shall make copies of such reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 15, Revised Codes of Montana 1947.

History: En. Sec. 14, Ch. 128, L. 1969.

15-2615. Duration. The period of duration of the corporation shall be perpetual.

History: En. Sec. 15, Ch. 128, L. 1969.

15-2616. Termination. If a corporation organized pursuant to this act shall fail to begin business within five (5) years from the effective date of its articles of incorporation, then said articles shall become null and void.

History: En. Sec. 16, Ch. 128, L. 1969.

15-2617. Credit of state not pledged. Under no circumstances is the credit of the state pledged herein.

History: En. Sec. 17, Ch. 128, L. 1969.

15-2618. Application to sections of Revised Codes of Montana 1947. The provisions of Title 15 of the Revised Codes of Montana 1947, shall apply to the corporation in so far as they may be applicable and not inconsistent with this act.

History: En. Sec. 18, Ch. 128, L. 1969.

Separability Clause

Section 19 of Ch. 128, Laws 1969 read
“The provisions of this act are severable,

and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.”

TITLE 16—COUNTIES

Chapter

4. Location of county seats, 16-405.
9. County commissioners—organization—meetings—compensation, 16-912.
10. General powers and duties of county commissioners, 16-1007.1, 16-1009.1, 16-1015.
11. Special powers and duties of county commissioners, 16-1182 to 16-1184.
14. County fairs, 16-1406.
15. County land advisory board, 16-1512, 16-1513.
16. Rural improvement districts, 16-1601, 16-1602, 16-1620.
17. Weed control, 16-1709.1, 16-1713.
18. Claims against counties, county warrants, 16-1803, 16-1803.1.
19. County budget system, 16-1904.
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41. County planning and zoning districts, 16-4101.
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48. County parks, 16-4801, 16-4801.1, 16-4803 to 16-4805.

CHAPTER 4—LOCATION OF COUNTY SEATS

Section

16-405. Registration of voters.

16-405 (4382) Registration of voters. The period for the registration of electors shall be between the hours of nine a.m. and nine p.m. on all legal days from nine a.m. of the fourth Monday prior to the date of said election to nine p.m. of the second following Saturday. It shall be the duty of each registry agent to publish and post notices of the time and places of registration in the manner provided by law for the publication of notices of registration for general elections. No person shall be entitled to register and vote at such special election unless he is a qualified voter of the state of Montana of the minimum age provided by the constitution of the state of Montana and has met the residency requirement for voting provided by the constitution of the state of Montana, and also takes and subscribes to the oath provided in section 479, R.C.M. 1947.

The general election laws of this state governing the registration of electors and defining the duties of the registry agents shall apply to and govern the registration of electors in elections held under this act in so far as the same do not conflict herewith.

History: En. Sec. 5, Ch. 135, L. 1911;
re-en. Sec. 4382, R.C.M. 1921; amd. Sec. 1,
Ch. 119, L. 1971.

Amendments

The 1971 amendment substituted "the minimum age provided by the constitu-

tion of the state of Montana and has met the residency requirements for voting provided by the constitution of the state of Montana" in the last sentence of the first paragraph for "the age of twenty-one years, and will have been a resident of Montana one year and of the territory embraced within the boundaries of the new county for a period of one hundred and

eighty days on the day next preceding the day of such election."

Effective Date

Section 2 of Ch. 119, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

CHAPTER 9—COUNTY COMMISSIONERS—ORGANIZATION—MEETINGS—COMPENSATION

Section

16-912. Compensation of members of board.

16-912. (4464) Compensation of members of board. (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary as hereinafter set forth:

First class	\$8,000
Second class	\$7,500
Third class	\$7,300
Fourth class	\$7,100

In addition, each member of the board of county commissioners in counties of the first, second, third and fourth class shall receive nine cents (\$.09) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties.

(2) Each member of the board of county commissioners in all other counties is entitled to thirty dollars (\$30) per day for each day's attendance on the sessions of the board but not to exceed four thousand dollars (\$4,000) per year, and nine cents (\$.09) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, provided, however, that any county commissioner whose place of residence is fifty (50) miles or more from the county seat, as measured by the usual route of travel, may elect to receive mileage as provided in this section or, in lieu of mileage, a sum of ten dollars (\$10) per day for each day's attendance on sessions of the board as expenses, while engaged in the performance of his official duties, and no other compensation must be allowed.

(3). * * * [Same as parent volume.]

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L.

1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969.

Amendments

The 1969 amendment raised the annual salaries in subsection (1) from \$6,500 to \$8,000, \$6,300 to \$7,500, \$6,100 to \$7,300 and \$6,000 to \$7,100; in subsection (2), raised the per diem compensation from \$25 to \$30 and inserted a \$4,000 per year maximum.

CHAPTER 10—GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section

- 16-1007.1. County authorized to obtain property by trade or purchase from any city, town or political subdivision—appraisal unnecessary.
- 16-1009.1. County authorized to sell or trade property to city, town or political subdivision—resolution and notice of intent.
- 16-1015. Taxation.

16-1007.1. County authorized to obtain property by trade or purchase from any city, town or political subdivision—appraisal unnecessary. A county shall have power to trade with, or purchase from, any city, town or political subdivision such property without an appraisal of the property traded or purchased.

History: En. Sec. 2, Ch. 302, L. 1969.

the purchase thereof, by a county without appraisal.

Title of Act

An act to permit counties power to sell or trade property to any city, town or political subdivision; and to provide for

Cross-References

Cities authorized to sell, trade or purchase property, secs. 11-964.1 and 11-964.2.

16-1009. (4465.9) Sale of property.**Industrial Development Projects**

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is therefore not limited by

provision in this section that county not sell land except at public auction. *Fickes v. Missoula County*, — M —, 470 P 2d 287.

16-1009.1. County authorized to sell or trade property to city, town or political subdivision—resolution and notice of intent. A county upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for three (3) weeks in a newspaper published in such city, town or county in which located, shall have power to sell or trade, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the county business, to any city, town, or political subdivision, without an ordinance, public notice, public auction, bids, or appraisal; proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of county commissioners involved and entered in the minutes of the regular or special meetings.

History: En. Sec. 1, Ch. 302, L. 1969.

Cross-References

Cities authorized to sell, trade or purchase property, secs. 11-964.1 and 11-964.2.

16-1013. (4465.10) Examination and allowance of officers' accounts.**Board for County Prisoners**

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized account of county funds

received for furnishing board to prisoners of county jail. *State ex rel. Lucier v. Murphy*, — M —, 478 P 2d 273.

16-1015. (4465.12) Taxation. The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law to levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding twenty-four (24) mills, on each dollar of the taxable value-

tion for any one (1) year for counties of the fourth, fifth, sixth and seventh classes, and twenty-two (22) mills on each dollar of the taxable valuation for any one (1) year for counties of the first, second and third classes and to levy such taxes as are required to be levied by special or local statutes.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959; amd. Sec. 1, Ch. 205, L. 1961; amd. Sec. 1, Ch. 33, L. 1963; amd. Sec. 1, Ch. 18, L. 1965; amd. Sec. 1,

Ch. 128, L. 1967; amd. Sec. 1, Ch. 283, L. 1969. See history of section 16-1001.

Amendments

The 1969 amendment substituted "twenty-four (24) mills" for "twenty (20) mills" and inserted "for counties of the fourth * * * and third classes and" after "any one (1) year."

16-1030. (4465.27) Lease of county property.

Special Purpose Leases

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is not limited by pro-

vision in this section that county not make lease longer than ten years. Fickes v. Missoula County, — M —, 470 P 2d 287.

16-1031. (4465.28) Repealed.

Repeal

Section 16-1031 (Subd. 29, Sec. 1, Ch. 100, L. 1931; Sec. 1, Ch. 1708, L. 1947;

Sec. 1, Ch. 202, L. 1961), relating to garbage and ash collection, was repealed by Sec. 6, Ch. 136, Laws 1971.

CHAPTER 11—SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section

16-1182. Board of county commissioners may establish curfew for minors—administrative rules and regulations.

16-1183. Law enforcement officials to enforce act.

16-1184. Penalty—misdemeanor.

16-1182. Board of county commissioners may establish curfew for minors—administrative rules and regulations. The boards of county commissioners of the respective counties shall have power, by general order, from time to time, to establish a curfew hour, after which minors will not be allowed abroad on the public streets within the confines of unincorporated cities and towns of any such county; and shall have authority to make all proper and necessary administrative rules and regulations for the purpose of carrying into effect the provisions of this act.

History: En. Sec. 1, Ch. 29, L. 1969.

Compiler's Notes

Chapter 29, Laws 1969 provided: "It is the intent of the legislative assembly that this act be codified as one of the special powers enumerated in chapter 11 of Title [16] 15, Revised Codes of Montana, 1947."

The bracketed reference to Title 16 was substituted by the compiler for an erroneous reference to Title 15.

Title of Act

An act providing for the establishment of a curfew hour for minors in unincorporated cities and towns by general order of the board of county commissioners of the respective counties of Montana, providing a penalty and for enforcement repealing all acts and parts of acts in conflict herewith.

16-1183. Law enforcement officials to enforce act. The enforcement of the provisions of this act is enjoined upon every officer and official whose duty it is to enforce the laws of the state.

History: En. Sec. 2, Ch. 29, L. 1969.

16-1184. Penalty—misdemeanor. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding ten dollars (\$10.00).

History: En. Sec. 3, Ch. 29, L. 1969. all acts and parts of acts in conflict therewith.

Repealing Clause

Section 4 of Ch. 29, Laws 1969 repealed

CHAPTER 12—COUNTY PRINTING COMMISSION

16-1225. Act how cited.

Cross-References

Printing defined, sec. 19-103.1.

16-1227. Establishment of county printing commission.

Cross-References

Commission renamed and continued in department of intergovernmental relations, sec. 82A-904.

16-1228. Compensation.

Cross-References

Compensation and reimbursement of members, secs. 82A-110(5), 82A-904(3).

CHAPTER 14—COUNTY FAIRS

Section

16-1406. Appropriation and tax levy for county fairs.

16-1406. (4549) Appropriation and tax levy for county fairs. The board of county commissioners of their respective counties may appropriate annually out of the general fund of the county treasury to the county fair commission a sum not to exceed three thousand five hundred dollars (\$3,500), to be expended by the county fair commission for the purpose of holding a county fair and/or junior fair, for advertising the products and resources of their county. In addition to the appropriation above provided for, or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of one and one-half ($1\frac{1}{2}$) mills or less on each dollar of taxable property in such county, for the purpose of securing, equipping, maintaining and operating a county fair and/or a junior fair, including the purchase of land for such purposes, and the erection of such buildings and other appurtenances as may be necessary; provided, however, that no portion of said appropriation or tax levy shall be expended for horse racing.

History: En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; amd. Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971.

Amendments

The 1971 amendment increased the maximum annual appropriations specified in the first sentence from \$2,500 to \$3,500.

CHAPTER 15—COUNTY LAND ADVISORY BOARD

Section

16-1512. Dispositions of property prior to 1969 validated.

16-1513. Dispositions of property prior to 1971 validated.

16-1512. Dispositions of property prior to 1969 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 78, L. 1969.

Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and

all instruments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right, title and interest of the county in and to the property described or covered.

16-1513. Dispositions of property prior to 1971 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 96, L. 1971.

Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all instru-

ments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right title and interest of the county in and to the property described or covered.

CHAPTER 16—RURAL IMPROVEMENT DISTRICTS

Section

16-1601. Rural improvement districts—creation and objects.

16-1602. Resolution of intention—publication, mailing and notice.

16-1620. Form and terms of district warrants and bonds—payment of contracts.

16-1601. (4574) Rural improvement districts—creation and objects. Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose

of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water, and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

The owner or owners of open ditches carrying irrigation or other water, shall not be included in any rural improvement districts under this act for the purpose of assessment to support the rural improvement districts for the installation, repair, or maintenance of any protective devices. Such devices or improvements shall provide access to, and shall not be constructed so as to hinder the operation and maintenance of the ditch.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969.

amendments of section 16-1601 by 1961 acts. Therefore, this section takes the place of both sections 16-1601(1) and 16-1601(2) as set forth in the parent volume.

Amendments

The 1969 amendment reconciled the two 1961 amendments and added the second paragraph.

Compiler's Notes

The 1969 amendment reconciled the two

16-1602. (4575) Resolution of intention—publication, mailing and notice. Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. Upon having passed such a resolution the board of county commissioners must give notice of the passage of such resolution of intention, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning real property within the proposed district, listed in his name upon the last completed assessment roll for state, county and school district taxes, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, or acquired by purchase, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R. C. M. 1921; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969.

Amendments

The 1969 amendment inserted "real" before "property" after "firm or corpora-

tion owning" and "listed in his name * * * school district taxes" after "proposed district" in the second sentence of the first paragraph.

Effective Date

Section 2 of Ch. 252, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 6, 1969.

16-1620. (4593) Form and terms of district warrants and bonds—payment of contracts. (1) All costs and expenses incurred in the construction or maintenance of any improvement specified in this act, in any improvement district shall be paid for by special improvement district bonds, or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. _____
United States of America
State of Montana
Warrant or _____ Dollars
(Bond No. _____) \$_____
Interest at the rate of _____ percent per annum, payable annually.
Special Improvement District Coupon
Warrant or Bonds

_____, Montana.
Issued by the County of _____, Montana.
The county treasurer of _____ County, Montana, will pay to _____, or bearer, the sum of _____ dollars, as authorized by Resolution No. _____, as passed on the _____ day of _____, 19____, creating or maintaining the Special Improvement District No. _____, for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of _____ County, Montana.

This warrant (or bond) bears interest at the rate of _____ per cent per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bear the signatures of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement dis-

trict fund (construction and maintenance) for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of _____, Montana, relating to the issuance thereof.

Dated at _____, Montana, this _____ day of _____, 19____, County of _____, Montana.

(SEAL)

By _____, chairman of the board of county commissioners.

(SEAL)

_____ County Clerk

Registered at the office of the county treasurer of _____, County, Montana this _____ day of _____, 19____.

_____ County Treasurer

(2) And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall bear the signatures of the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered, and shall bear the signatures of the chairman of the board of county commissioners and the county clerk, provided however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners. Said bonds shall be in denominations of one hundred dollars (\$100) or fractions, or multiples thereof; and may be issued in installments, and may extend over a period of not to exceed thirty (30) years, except that if federal loans are available for improvements, repayment may extend over a period not to exceed forty (40) years.

(3) Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided that the county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration; provided, further, that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county trea-

suror, who shall give notice by publication once in a newspaper published in the city, or, at the option of the county treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds), and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

(4) * * * [Same as parent volume.]

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "not to exceed six per cent per annum" after "shall bear interest" in the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

16-1631. (4602) Transfer of management and control of district, etc.

Compiler's Notes

Chapter 123, laws of the fourteenth legislative assembly (1915), referred to in

this section, was repealed by Ch. 147, Laws 1921.

CHAPTER 17—WEED CONTROL

Section

16-1709.1. Weed control and weed seed extermination districts—formation.

16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation.

16-1709. Repealed.

Repeal

Section 16-1709 (Sec. 5, Ch. 195, L. 1939; Sec. 1, Ch. 59, L. 1951), relating to

creation of weed control and weed seed extermination districts, was repealed by Sec. 3, Ch. 185, Laws 1969.

16-1709.1. Weed control and weed seed extermination districts—formation. A weed control and weed seed extermination district shall be formed in every county of this state and shall include all the land within the boundaries of the county.

History: En. 16-1709.1 by Sec. 1, Ch. 185, L. 1969.

Title of Act

An act providing that a weed control district be formed in every county; amend-

ing section 16-1713, R. C. M. 1947, by eliminating the language referring to city and town district; and repealing sections 16-1709, 16-1710, 16-1711, 16-1712 and 16-1723, R. C. M. 1947.

16-1710 to 16-1712. Repealed.

Repeal

Sections 16-1710 to 16-1712 (Secs. 6 to 8, Ch. 195, L. 1939; Sec. 1, Ch. 228, L. 1947; Sec. 1, Ch. 60, L. 1951), relating to

the creation of weed control and weed seed extermination districts, were repealed by Sec. 3, Ch. 185, Laws 1969.

16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation. The board of county commissioners of each county shall appoint a county weed board consisting of three (3) or five (5) members. If a five (5) member board, three (3)

members shall be rural agricultural landowners within the county, two (2) from municipalities within the county. If a three (3) member board, two (2) members shall be rural agricultural landowners within the county and one (1) member shall be from a municipality within the county. They shall be appointed for a period of one (1), two (2), and three (3) years respectively for a three (3) member board or should a five (5) member board be selected, they shall be appointed for one (1) and two (2) year terms respectively dating from the preceding July, and thereafter an appointment or reappointment shall be made annually by the board of county commissioners. Said supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. All such supervisors shall be entitled to mileage, and per diem of ten dollars (\$10) per day. The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within their county the control program.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969.

Amendment

The 1969 amendment revised this section

to insert provisions for five-member boards.

Repealing Clause

Section 3 of Ch. 185, Laws 1969 read "Sections 16-1709, 16-1710, 16-1711, 16-1712, and 16-1723, R. C. M. 1947, are repealed."

16-1723. Repealed.

Repeal

Section 16-1723 (Sec. 1, Ch. 206, L. 1953; Sec. 1, Ch. 47, L. 1965), relating to

the dissolution of weed control and weed seed extermination districts, was repealed by Sec. 3, Ch. 185, Laws 1969.

CHAPTER 18—CLAIMS AGAINST COUNTIES, COUNTY WARRANTS

Section

16-1803. Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings exceeding two thousand five hundred dollars (\$2,500).

16-1803.1. Division of contracts to circumvent bidding procedures prohibited.

16-1803. (4605.1) Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings exceeding two thousand five hundred dollars (\$2,500). (1) No contract shall be entered into between a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind for which must be paid a sum in excess of four thousand dollars (\$4,000), or for the construction of any building, for which must be paid a sum in excess of two thousand five hundred dollars (\$2,500) without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section

shall not apply to contracts for public printing entered into in accordance with the provisions of chapter 12 of Title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the board, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969.

Compiler's Notes

Sections 16-1201 to 16-1224, of chapter 12, Title 16, referred to in subsection (1), were repealed by Sec. 10, Ch. 280, Laws 1967.

Amendments

The 1969 amendment inserted "for which must be paid * * * four thousand

dollars" after "materials or supplies of any kind" and substituted "two thousand five hundred dollars (\$2,500)" for "two thousand dollars" after "a sum in excess of" in subsection (1).

Special Purpose Construction

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is thereby not limited by provision in this section that county not contract for construction except on public bidding. *Fiekens v. Missoula County*, — M —, 470 P 2d 287.

16-1803.1. Division of contracts to circumvent bidding procedures prohibited. Whenever any law of this state provides a limitation upon the amount of money that a county can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a county shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device.

History: En. Sec. 1, Ch. 153, L. 1971.

Title of Act

An act to provide that a county shall not circumvent any competitive bidding procedures with respect to the letting of a

contract for a public work or construction project under certain circumstances by dividing a public work or construction project into several contracts, separate work orders or similar devices.

CHAPTER 19—COUNTY BUDGET SYSTEM

Section

16-1904. Hearings on budget—adoption—fixing tax levies.

16-1901. (4613.1) County budget, etc.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(j).

16-1904. (4613.4) Hearings on budget — adoption — fixing tax levies.

(1). * * * [Same as parent volume.]

(2) Upon the conclusion of such hearing the board shall first determine

and fix the amount which it is estimated will accrue to each fund during the fiscal year from all sources, except the taxation of property, but in so doing the board shall not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during any preceding fiscal year, or years. The board shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for the expenditures so authorized; provided that there shall not be added to the amount to be appropriated and authorized to be expended for any item, or to the total amount appropriated and authorized to be expended from any fund any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for such fiscal year; and provided further that the amount appropriated and authorized to be expended for any item contained in such budget, except for salaries which must not exceed by more than ten per centum (10%) the amount appropriated and authorized for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding and except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than five per centum (5%) the amount appropriated and authorized for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, shall not exceed by more than five per centum (5%) the total amount appropriated and authorized for all purposes, except for salaries which must not exceed ten per centum (10%) the amount appropriated and authorized from such fund under the appropriation made from such fund in the budget adopted for the fiscal year immediately preceding and except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants, from such fund under the appropriation made from such fund in the budget approved and adopted for the fiscal year immediately preceding, provided further that the foregoing limitations shall not apply to appropriations and expenditures authorized to be made from the county poor fund for payment of bonds and emergency warrants and interest thereon; and provided further that the total expenditures authorized to be made from any fund, including reserve added thereto as hereinafter provided, shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately preceding, the amount of estimated revenues to accrue to such funds, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year.

(3) to (6). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 148, L. 1929;
amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1,
Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L.
1969.

Amendments

The 1969 amendment inserted exceptions relating to salaries in subsection (2).

16-1909. (4613.8) State examiner to make rules and regulations, etc.**Cross-References**

State examiner's functions transferred,
sec. 82A-903(3)(j).

CHAPTER 20—COUNTY FINANCE—BONDS AND WARRANTS**Section**

- 16-2002. County registered warrants—interest.
 16-2011. Term of bonds—power to redeem—maximum interest.
 16-2021. Petition and election required for bonds issued for other purposes.
 16-2022. Form, contents and proof of petition.
 16-2026. Registration.
 16-2032. Sale of bonds.
 16-2046. Exchange of bonds for amortization bonds.
 16-2050. Investment of county moneys in county warrants and investment of school district or county high school moneys.

16-2001. (4622.1) Investments of sinking funds of counties, etc.**Cross-References**

State examiner's functions transferred,
sec. 82A-903(3)(k).

16-2002. (4625) County registered warrants—interest. All county warrants hereafter issued, after having been presented to the county treasurer for payment and by him endorsed "Not paid for want of funds in the treasury," from and after the date of such presentation and endorsement, shall draw interest at the rate fixed by the county board in accordance with law.

History: En. Sec. 1, p. 99, L. 1899; re-en. Sec. 2915, Rev. C. 1907; re-en. Sec. 4625, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1941; amd. Sec. 23, Ch. 234, L. 1971.

Amendments

The 1971 amendment substituted "fixed by the county board in accordance with law" for "of four (4%) per cent per annum" at the end of the section.

16-2011. (4630.4) Term of bonds—power to redeem—maximum interest. No bonds issued for any of the purposes designated in subdivisions (a), (b), (c), of section 16-2008, shall be for a longer term than twenty (20) years; no bonds issued for any of the purposes designated in subdivisions (d), or (e), of section 16-2008, shall be for a longer term than ten (10) years.

The following limitations as to term shall apply to all bonds issued under subdivision (f) of section 16-2008; No bonds shall be issued for a longer term than ten (10) years, provided, that if the unexpired term of the bonds to be refunded shall be more than ten (10) years then, in such event, the refunding bonds may be issued for such unexpired term; or if such ten (10) year term will require an annual tax levy for payment of such refunding bonds exceeding ten (10) mills on all property subject to taxation in the county, then, in such event, the term may be so extended as to reduce the required annual levy to ten (10) mills, provided, however, that the term shall not under any circumstances exceed twenty (20) years.

No bonds issued for any of the purposes designated in subdivision (g) of section 16-2008 shall be for a longer term than five (5) years.

Bonds issued for any of the purposes designated in subdivisions (h) and (i) of section 16-2008 shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of ten (10) mills on all the property within the county subject to taxation and the term shall not exceed (20) years. The length of the term required shall be estimated and calculated by the board of county commissioners based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes taking into account probable changes in the taxable valuation and losses in tax collections, provided, however, that irrespective of any miscalculation by the county commissioners in fixing the term of the bonds the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

All bonds issued for a longer term than five (5) years shall be redeemable at the option of the county five (5) years from the date of issue and on any payment due date thereafter before maturity and shall be so stated on the face of the bonds. The maximum rate of interest which any of such bonds may bear shall be seven percent (7%) per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971.

Amendments

The 1971 amendment increased the maximum rate of interest on bonds authorized to be issued under this chapter from 6% to 7% per annum; and made a minor change in phraseology.

16-2021. (4630.7) Petition and election required for bonds issued for other purposes. County bonds for any other purpose than those enumerated in section 16-2013 shall not be issued unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the county and approved, as provided in section 16-2027; and no such bond election shall be called unless there has been presented to the board of county commissioners a petition, asking that such election be held and such question be submitted, signed by not less than twenty per centum (20%) of the qualified electors of the county.

History: En. Sec. 7, Ch. 188, L. 1931; amd. Sec. 12, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted "who are

taxpayers upon property within the county and whose names appear on the last completed assessment roll for state and county taxes" from the end of the section.

16-2022. (4630.8) Form, contents and proof of petition. Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in such petition. Such petition may consist of one (1) sheet, or of several

sheets identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the county clerk as hereinafter provided. The petition shall give the post-office address and voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the county clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate under his official signature and the seal of his office, which certificate shall set forth:

- (1) The total number of persons who are registered electors.
- (2) * * * [Same as parent volume.]
- (3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors of the county.

History: En. Sec. 8, Ch. 188, L. 1931; amd. Sec. 13, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted "and whose names appear upon the last completed assessment roll for state and county taxes"

from the end of subdivision (1); substituted "registered electors of the county" at the end of subdivision (3) for "registered electors whose names appear upon the last completed assessment roll for state and county taxes"; and made a minor change in phraseology.

16-2026. (4630.12) Registration. Upon the adoption of the resolution calling for the election, the county clerk must cause to be published in the official newspaper of the county a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such voting precinct who are entitled to vote at such election, and shall prepare precinct registers for such election, as provided in section 23-3012, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors.

History: En. Sec. 12, Ch. 188, L. 1931; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959; amd. Sec. 14, Ch. 158, 1971.

Compiler's Notes

Section 23-515 referred to in the first sentence of the second paragraph was repealed by Sec. 248, Ch. 363, Laws of 1969. For a similar provision in current law, see section 23-3024.

Amendments

The 1971 amendment deleted from the beginning of the section a sentence reading "In all county bond elections hereafter held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes, shall have the right to vote"; deleted "who are taxpayers upon property within the county and whose

names appear on the last completed assessment roll for state, county and school district taxes, and" before "who are entitled to vote" in the first sentence of the

second paragraph; and substituted a reference to section 23-3012 for a reference to section 23-515.

16-2031. (4630.17) Notice to the state board of land commissioners.

Cross-References

Board of land commissioners' functions transferred, sec. 82A-205(1)(b).

16-2032. (4630.18) Sale of bonds. The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal, and in determining the kind of bonds to be issued the board shall take into consideration not only the rate of interest demanded on each kind, but also all other known elements affecting the interests of the county, and for the board shall accept the bid which they shall judge most advantageous to the county. No attorney fees, brokerage or other fees, or commission of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the county; provided, however, that such bonds shall not be sold at less than par and accrued interest to date of delivery.

History: En. Sec. 18, Ch. 188, L. 1931; amd. Sec. 9, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted the pro-

viso to the third sentence; deleted "shall not bear a greater rate of interest than six per centum (6%) and" after "such bonds" in the proviso to the last sentence; and made a minor change in punctuation.

16-2046. (4630.32) Exchange of bonds for amortization bonds. Subject to the approval of the state board of land commissioners the board of county commissioners of any county is hereby vested with the power and authority to issue amortization bonds for the purpose of refunding any outstanding bonds of such county held by the state of Montana and which were not issued either as amortization or serial bonds, whether such bonds are due or not, and to exchange the same for such outstanding bonds. Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in section 16-2012, and shall bear interest at such rate as may be agreed upon between the board of county commissioners and the state board of land commissioners. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same to an election, and it shall not be necessary to publish any notice of sale of such bonds. This section shall not be construed so as to deprive boards of county commissioners of the right to advertise, sell and issue refunding bonds in the manner provided by this act.

History: En. Sec. 32, Ch. 188, L. 1931;
amd. Sec. 24, Ch. 234, L. 1971.

end of the second sentence "but which
shall not exceed six per centum (6%) per
annum."

Amendments

The 1971 amendment deleted from the

16-2049. (4632) Petty cash fund.

Cross-References

State examiner's functions transferred,
sec. 82A-903(3)(k).

16-2050. (4639.1) Investment of county moneys in county warrants and investment of school district or county high school moneys. (1) Except as provided in subsection (2) of this section, whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of subsection (6) of section 16-2618.

(2) Whenever the county has under its control any moneys realized from the sale of bonds by a school district or county high school for the purpose of construction, for which there is no immediate demand, which in the judgment of the governing body of the school district or county high school it would be advantageous to invest in any time or savings deposits or in short-term obligations of the United States of America, such

governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments, except interest on the sale of bonds accrued in the period between the date of issue and the time of purchase which must be credited to the sinking fund, may be credited to the sinking fund of the said school district or county high school, provided that in the event construction of said buildings is delayed for a period longer than six (6) months due to court action or other causes beyond the control of the trustees, the trustees may direct that interest earned be credited to the fund from which the money was withdrawn. The trustees may authorize expenditures from interest earned, except as provided above, for furnishing and equipping the buildings for which the bonds were sold.

History: En. Sec. 1, Ch. 144, L. 1927; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969.

Amendments

The 1969 amendment added the last sentence to subsection (1); inserted "ex-

cept interest * * * must be credited to the sinking fund" after "such investments," substituted "may be credited" for "shall be credited," deleted "notwithstanding the provisions of subsection (6) of section 16-2618" at the end of the second sentence and added the proviso; and added the third sentence to subsection (2).

CHAPTER 24—COUNTY OFFICERS—QUALIFICATIONS— GENERAL PROVISIONS

Section

16-2401. General qualifications for county office.

16-2402. General qualifications for district and township offices.

16-2401. (4723) General qualifications for county office. No person is eligible to a county office who at the time of his election is not of the age of voting as required by the Montana constitution, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R.C.M. 1921; amd. Sec. 1, Ch. 423, L. 1971. Cal. Pol. C. Sec. 4101.

Amendments

The 1971 amendment substituted "age of voting as required by the Montana constitution" for "age of twenty-one years."

16-2402. (4724) General qualifications for district and township offices. No person is eligible to a district or township office who is not of the age of voting as required by the Montana constitution, a citizen of the state, and an elector of the district or township in which the duties of the office are to be exercised, for which he is elected.

History: En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R.C.M. 1921; amd. Sec. 2, Ch. 423, L. 1971. Cal. Pol. C. Sec. 4102.

Amendments

The 1971 amendment substituted "age of voting as required by the Montana constitution" for "age of twenty-one years."

16-2406. (4728) County and other officers, when elected, etc.

Compiler's Notes

Section 19, Art. VIII of the Constitution, as amended in 1962, provides for a four-year term of office for county attorneys. This supersedes the provision in the

third paragraph of section 16-2406, as set forth in the parent volume, that county attorneys shall be elected "at each general election."

CHAPTER 26—COUNTY TREASURER—DUTIES AS TO WARRANTS AND OTHER COUNTY FINANCES

Section

16-2604. Registry of warrants—interest.

16-2618. Deposit of public funds by county, city and town treasurers.

16-2601. (4750) Duties of county treasurer.**Cross-References**

School appropriations, entering on ac-

counting records of county treasurer, sec. 75-6809.

16-2604. (4753) Registry of warrants—interest. When any county warrant, any high school warrant or any school district warrant hereafter issued is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon, "not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant shall bear interest at a rate fixed by the board of trustees in accordance with law.

History: Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R.C.M. 1921; amd. Sec. 2, Ch. 15, L. 1941; amd. Sec. 1, Ch. 53, L. 1945; amd. Sec. 25, Ch. 234, L. 1971. Cal. Pol. C. Sec. 4148.

Amendments

The 1971 amendment substituted "a rate fixed by the board of trustees in accordance with law" for "four (4%) per cent per annum" at the end of the section.

Cross-References

School warrants, recording and payment, sec. 75-6811.

16-2618. (4767) Deposit of public funds by county, city and town treasurers. (1). * * * [Same as parent volume.]

(2) Said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such security shall consist of cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States government and its dependents, bonds guaranteed by the United States government or its dependents, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town or school district of the state of Montana, which are a general obligation of such county, city, town or school district, bonds of the Federal Land Banks, Federal Intermediate Credit Bank debentures, Federal Home Loan Bank notes and bonds, Bank for Co-operatives' debentures, Federal National Mortgage Association notes, bonds and guaranteed certificates of participation, obligations of or fully guaranteed by the Government National Mortgage Association, Farmers' Home Administration insured notes, notes fully guaranteed as to principal and interest by the Small Business Administration, Federal Housing Administration debentures, general obligation bonds of other states and counties of other states and bonds issued in the United States of America, which are quoted on the New York market which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) to (8). * * * [Same as parent volume.]

History: Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L.

1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969. Cal. Pol. C. Sec. 4161.

Amendments

The 1969 amendment rewrote the second sentence of subsection (2).

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(1).

16-2621. (4767.3) State examiner to sign trustee and deposit receipts.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(1).

16-2625. (4771) Must permit state examiner and county clerk, etc.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(1).

CHAPTER 27—SHERIFF

Section

16-2724. Purchase or lease of sheriff's vehicle authorized—operation and maintenance costs—mileage.

16-2725. Liability insurance for privately owned vehicles when used on official business.

16-2724. Purchase or lease of sheriff's vehicle authorized—operation and maintenance costs—mileage. The board of county commissioners may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by him and may also pay for the operation and maintenance of those vehicles from county funds. No mileage shall be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

History: En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971.

for the operation and maintenance of those vehicles from county funds.

Title of Act

An act to provide that the board of county commissioners may purchase or lease motor vehicles from county funds for the use of the county sheriff or any person employed by him and may also pay

Amendments

The 1971 amendment deleted "when requested to do so by the county sheriff" after "county commissioners" in the first sentence.

16-2725. Liability insurance for privately owned vehicles when used on official business. The board of county commissioners shall provide liability insurance for not more than one (1) privately owned vehicle used by the sheriff, not more than one (1) privately owned vehicle used by the undersheriff, and not more than one (1) privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance shall be paid for from county funds and shall provide full comprehensive and collision coverage plus minimum coverage of one hundred thousand dollars (\$100,000) for each person for bodily injury and medical expenses, three hundred thousand dollars (\$300,000) for all persons per accident, and fifty thousand dollars (\$50,000) per accident for prop-

erty damage. This section shall not apply to counties furnishing motor vehicles to the sheriff's department pursuant to the provisions of section 16-2724, R.C.M. 1947.

History: En. Sec. 2, Ch. 340, L. 1971.

CHAPTER 28—COUNTY JAILS

Section

16-2808. Provision and agreement for use of county jails for federal prisoners.

16-2818. Sheriff to receive all persons duly committed—medical expense.

16-2808. (12472.2) Provision and agreement for use of county jails for federal prisoners. Provision and agreement for the use of said jails and the support and subsistence of such federal prisoners shall first be made by the United States through or by the proper officer or officers, with the board of county commissioners of the county wherein such prisoners are to be confined, such agreement to be in writing and contain a provision that the United States shall, upon claim presented for the county by its county clerk and recorder, pay into the county treasury of the county the sum of five dollars (\$5) per day for each and every prisoner held in the county jail upon order or commitment of the United States government or any department or officer thereof.

History: En. Sec. 2, Ch. 120, L. 1923; amd. Sec. 1, Ch. 34, L. 1931; amd. Sec. 1, Ch. 253, L. 1969; amd. Sec. 1, Ch. 420, L. 1971.

Amendments

The 1969 amendment increased the per diem payment for holding federal prisoners in county jails from \$1.00 to \$5.00;

and increased the payment by the county to the sheriff from 75¢ to \$2.50 per day.

The 1971 amendment deleted a second sentence reading, "The sheriff of the county, who has custody of such prisoners, shall be paid by the county for their support and subsistence at the rate of two dollars and fifty cents (\$2.50) per day, per prisoner."

16-2818. (12482) Sheriff to receive all persons duly committed—medical expense. The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing and bedding, for which he shall submit claims for the actual expenses incurred to the board of county commissioners for their determination, and, except as provided in the next section, to be paid out of the county treasury. If in the opinion of the sheriff any prisoner, while detained, requires medication, medical services or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971. Cal. Pen. C. Sec. 1611.

Amendments

The 1971 amendment substituted "submit claims for the actual expenses incurred to the county commissioners for their determination" for "be allowed a reasonable compensation, to be determined by the board of county commissioners" in the first sentence; and made a minor change in punctuation.

DECISIONS UNDER FORMER LAW

Accounting to Commissioners

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized accounting of county

funds received for furnishing board to prisoners of county jail. State ex rel. Lucier v. Murphy, — M —, 478 P 2d 273. (Decision prior to 1971 amendment of this section).

16-2823. (12487) Duty of sheriff.**Board for County Prisoners**

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized accounting of county funds received for furnishing board to

prisoners of county jail. State ex rel. Lucier v. Murphy, — M —, 478 P 2d 273. (Decision prior to 1971 amendment of section 16-2818).

CHAPTER 29—COUNTY CLERK

Section

16-2902. What to be recorded.

16-2902. (4796) What to be recorded. He must, upon payment of his fees for the same, record, or photograph, or correctly copy, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by photographic process, or by the use of prepared blank forms:

1. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

2. to 15. * * * [Same as parent volume.]

Whenever the laws of the state of Montana require or permit any instrument to be recorded, such recording may be made in the manner or by any of the processes hereinbefore prescribed.

History: En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971. Cal. Pol. C. Sec. 4235.

Amendments

The 1971 amendment added "and abstracts of such instruments which have been acknowledged or proved" at the end of subdivision 1.

16-2924. (4814) Annual report of county clerk.**Cross-References**

State examiner's functions transferred, sec. 82A-903(3)(m).

CHAPTER 32—COUNTY AUDITOR

Section

16-3203. Election—term—qualifications.

16-3203. (4825) Election—term—qualifications. There shall be elected in and for each county of the class named in the preceding section, at the general election to be held in November, 1892, and quadrennially thereafter, some male person to serve as county auditor of the county for which he shall be elected for the term of four (4) years, and until his

successor shall be elected and qualified, the term to begin on the first Monday in January succeeding his election. No person shall be eligible to the office of county auditor of any county within the state who shall not have arrived at the age of voting as required by the Montana constitution, and who shall not have been for at least two (2) years next preceding his election, a bona fide resident of the county for which he shall be elected or appointed.

History.: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; amd. Sec. 3, Ch. 423, L. 1971.

Amendments

The 1971 amendment substituted "age of voting as required by the Montana constitution" in the second sentence for "age of twenty-one years"; and made minor changes in style.

16-3204. (4826) Oath.

Cross-References

Bonds of county officers and employees, sec. 6-203 et seq.

CHAPTER 34—COUNTY CORONER

16-3401. (4848) Coroner to hold inquest.

Compiler's Notes

Sections 94-201-1 to 94-201-12, referred

to in this section, were repealed by Sec. 2, Ch. 196, Laws 1967.

CHAPTER 37—DEPUTY COUNTY OFFICERS

Section

16-3705. Qualifications of deputy sheriffs, marshals and policemen.

16-3705. (4879) Qualifications of deputy sheriffs, marshals and policemen. (1) No sheriff of a county, mayor of a city, or other persons authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of at least six (6) months prior to the date of said appointment; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence. And provided further, that the person or body authorized by law to appoint special deputies, marshals, or policemen may, in its discretion, waive residency requirements.

(2) No sheriff shall employ as a deputy any individual who does not possess all the following qualifications:

(a) to (e) * * * [Same as parent volume.]

Subsection (2) of this section shall not be applicable to any deputy sheriff whose term of employment commenced prior to the effective date of this act.

(3) Any person whose term of employment as a deputy sheriff commences subsequent to the effective date of this act shall serve a one-year probationary period and that during this one-year period the employment

of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of this act.

(4) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to the effective date of this act to attend that academy provided for by chapter 52, Title 75, R.C.M. 1947, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending. Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

(5) Any deputy sheriff now employed or that may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

(a) to (g) * * * [Same as parent volume.]

(6) When a sheriff terminates the employment of a deputy he shall at the time of termination cause to be served upon said deputy a statement in writing subscribed and sworn to by the sheriff setting forth the cause or causes for the discharge or termination of the deputy's employment.

(7) Any deputy sheriff whose employment is terminated from and after the effective date of this act, may within thirty (30) days from the date of the termination of his employment make application to the district court of the county wherein the deputy was employed for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge. In the event that a deputy prevails at the hearing he shall be entitled to be reinstated as a deputy sheriff at the same salary he received prior to his discharge or termination of employment and he shall also be entitled to any rights that might have accrued to his benefit prior to his discharge or termination of employment, including that salary which he would have received but for the termination.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 66 and once by Ch. 81. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the two amendments do not appear

to conflict, the compiler has made a composite section incorporating the changes made by both amendments.

Amendments

Chapter 66, Laws of 1971, added the proviso at the end of subsection (1).

Chapter 81, Laws of 1971, deleted from subsections (2) through (7) phrases restricting the application of those subsections to first, second and third class counties.

CHAPTER 38—COUNTY CHARGES

Section

16-3802. Enumeration of county charges.

16-3802. (4952) **Enumeration of county charges.** The following are county charges:

1. and 2. * * * [Same as parent volume.]

3. The salary and actual expenses for traveling when on official duty

allowed by law to sheriffs, and the compensation allowed by law to constables for executing process on persons charged with criminal offenses.

4. The board of prisoners confined in jail.

5. The sums required by law to be paid to grand and trial jurors and witnesses in criminal cases.

6. The accounts of the coroner of the county for such services as are provided by law.

7. All charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law.

8. The necessary expenses incurred in the support of county hospitals and poor farms, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county.

9. The contingent expenses necessarily incurred for the use and benefit of the county.

10. Every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners, or declared to be a county charge.

History: En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; amd. Sec. 3, Ch. 420, L. 1971. Cal. Pol. C. Sec. 4344.

and renumbered former items 4, 5, 6, 7, 8, and 9 as items 5, 6, 7, 8, 9, and 10 respectively.

Amendments

The 1971 amendment deleted "and for the board of prisoners" after "official duty" in item 3; inserted a new item 4;

Repealing Clause

Section 4 of Ch. 420, Laws 1971 read "Sections 25-227 and 25-228, R. C. M. 1947, are repealed."

CHAPTER 39—COUNTY MANAGER FORM OF GOVERNMENT

16-3916. (4954.16) Department of finance.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(n).

CHAPTER 41—COUNTY PLANNING AND ZONING DISTRICTS

Section

16-4101. Planning and zoning districts—commission—creation.

16-4101. Planning and zoning districts—commission—creation. Whenever the public interest or convenience may require, and upon petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district, and to appoint a commission consisting of five (5) members. The commission is to consist of the three (3) county commissioners, the county surveyor and the county assessor. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses, and shall be residents of the county in which they serve. The commission hereby is authorized to appoint necessary employees and fix their compensation with the approval of the board of county commissioners, to select a chairman to serve for one (1) year, to appoint a secretary who shall keep permanent and complete

records of its proceedings, and to adopt rules governing the transaction of its business. The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board shall be paid from a levy of not to exceed one (1) mill on the taxable valuation of the real property within such district, provided that no such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to section 11-2702 (2)

History: En. Sec. 1, Ch. 154, L. 1953;
amd. Sec. 16, Ch. 273, L. 1971.

Amendments

The 1971 amendment added the proviso to the last sentence; and made a minor change in phraseology.

CHAPTER 42—MOSQUITO CONTROL DISTRICTS

Section

16-4209. State mosquito control advisory committee—members—duties.

16-4210. Mosquito control fund.

16-4209. State mosquito control advisory committee—members—duties.

(a) There is hereby established a state mosquito control advisory committee which shall have representation from: state entomologist, state department of health, and the departments of agricultural engineering, agronomy and soils of Montana state university. The state entomologist shall be the chairman of said committee.

(b) It shall be the duty of such committee to advise the commissioners of any county relative to the creation of mosquito control districts within such county and upon request to advise the boards of such districts in connection with their control programs.

(c) Annually on or before the first (1st) day of February, the board of each district shall submit to the state entomologist and state department of health for review and advice a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year.

History: En. Sec. 9, Ch. 183, L. 1953;
amd. Sec. 1, Ch. 2, L. 1969.

Amendments

The 1969 amendment, in the first sentence of subsection (a), inserted "control" before "advisory committee," substituted "have representation * * * department of health, and" for "be composed of the state board of entomology and the heads of," and substituted "university" for "college," in the second sentence, substituted

"state entomologist" for "chairman of the state board of entomology"; in subsection (b), inserted "upon request" before "to advise"; and, in subsection (c), substituted "the state entomologist and the state department of health" for "such committee" and deleted "its" before "review and advice."

Cross-References

Advisory committee abolished, sec. 82A-305(3).

16-4210. Mosquito control fund. The board of county commissioners of any county within which a mosquito control board has been created shall establish a mosquito control fund, and at the time fixed by law for levy and assessment of taxes shall levy a tax of not exceeding five (5) mills on the dollar of the total taxable valuation in such district on all property situated within the said district, the proceeds of which shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which such mosquito control district was created. Warrants upon such fund shall be drawn by the board of

county commissioners upon the presentation of claims approved by the mosquito control board.

History: En. Sec. 10, Ch. 183, L. 1953;
amd. Sec. 1, Ch. 22, L. 1969.

Amendments

The 1969 amendment substituted "all property" for "real property" before "situated within the said district" in the first sentence.

CHAPTER 43—PUBLIC HOSPITAL DISTRICTS

Section

- 16-4301. Purpose of act—allowable territory embraced within public hospital district.
- 16-4302. Petition to board of county commissioners.
- 16-4303. Hearing.
- 16-4304. Reference of creation of district at election.
- 16-4305. Resolution and order of board as respects election.
- 16-4306. Favorable vote—commissioners finally to organize district.
- 16-4307. Government of district—appointment, election and terms of trustees.
- 16-4308. Powers of district.
- 16-4309. Budget and tax levy.
- 16-4310. Tax collections and funds.
- 16-4311. Withdrawal of portion of district, petition for.
- 16-4312. Alteration of boundaries—annexation.
- 16-4313. Dissolution of district.

16-4301. Purpose of act—allowable territory embraced within public hospital district. The purpose of this act is to authorize the establishment of public hospital districts which shall have power to supply hospital facilities and services to residents of such districts, and as herein authorized, to others. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 155, L. 1953;
amd. Sec. 1, Ch. 257, L. 1969.

and operate public hospitals, or to maintain or aid in the maintenance and operation of a public hospital, and in either case" after "shall have power" in the first sentence.

Amendments

The 1969 amendment deleted "to own and operate public hospitals, or to lease

16-4302. Petition to board of county commissioners. Proceedings for creation of a hospital district shall be initiated by a petition, signed by not less than thirty per centum (30%) of the qualified electors of the proposed hospital district, who are taxpayers upon property within the proposed hospital district and whose names appear on the last completed assessment roll for state and county taxes. The petition may consist of one (1) sheet or several sheets identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk. The petition shall give the post-office address and voting precinct of each petitioner. Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the complete petition the affidavit of some person who circulated or assisted in circulating the petition, that he believes the signatures thereon are genuine and the signers knew the contents thereof before signing the same. The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, shall be filed with the county clerk, who shall within fifteen (15) days thereafter, carefully examine the same and the county records showing

the qualifications of the petitioners, and attach it to a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) The total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last completed assessment roll for state and county taxes.

(2) Which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than thirty per cent (30%) of the registered electors of the proposed hospital district who are taxpayers upon property thereon and whose names appear on the last completed assessment roll for state and county taxes. The county clerk shall present the petition and his certificate to the board of county commissioners at its first meeting held after he has attached his certificate. The board shall thereupon carefully examine the petition and, if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of such hospital district. A notice of such hearing shall be published in a newspaper having general circulation in the territory within the boundaries of the proposed hospital district, once each week for at least two (2) weeks, the last publication to be at least two (2) weeks before the hearing. If there is no newspaper having general circulation within the boundaries of the proposed hospital district, the notice of hearing shall be posted in at least three (3) public places within the boundaries of the proposed district for two (2) weeks before the hearing. The notice shall state the time, date, place and purpose of the hearing, describe the boundaries of the proposed hospital district, and state that any person residing in or owning property within the proposed hospital district may appear in support of or in opposition to the petition at such hearing.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969.

Amendment

The 1969 amendment rewrote this sec-

tion and, inter alia, inserted specific provisions as to form, circulation and certification of the petition. For previous text, see parent volume.

16-4303. Hearing. At the time fixed for said hearing, the board shall hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts, or hearing petitioners or objectors, without additional published or posted notice, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing.

History: En. Sec. 3, Ch. 155, L. 1953; amd. Sec. 3, Ch. 257, L. 1969.

Amendments

The 1969 amendment deleted "determine whether or not the petition complies with the requirements hereinbefore set forth and whether or not the notice required

herein has been published as required" from the end of the first sentence, and "At such hearing the board must" from beginning of former second sentence, making the present first sentence; and inserted "without additional published or posted notice," after "petitioners or objectors" in the second sentence.

16-4304. Reference of creation of district at election. The board of county commissioners, upon completion of the hearing hereinabove provided for, shall thereupon proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition. Said board, in its resolution of reference, may make such changes in the boundaries of the proposed district as it may deem advisable, without, however, including any additional lands not described in the petition, and it shall call an election, upon the question of the creation of the district.

History: En. Sec. 4, Ch. 155, L. 1953; amd. Sec. 4, Ch. 257, L. 1969.

Amendments

The 1969 amendment, in the first sentence, deleted "If" at the beginning, substituted "upon completion * * * provided for" for "shall determine that the peti-

tioners have complied with the requirements herein set forth and that the prescribed notice has been published, It" and deleted "as in this act prescribed" at the end; and in the second sentence, deleted "and shall define and establish the boundaries of the district" after "described in the petition."

16-4305. Resolution and order of board as respects election. The board must, in its resolution, designate whether a special election shall be held, or whether the matter shall be determined at the next general election. If a special election is ordered, the board must, in its order, specify the date for such election, the voting places, and shall appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws; provided that if a special election is held the polls shall be open from 8 a. m. to 6 p. m., on the day appointed for such election. At such election, the ballots must contain the words "Hospital District, Yes" and "Hospital District, No." The judges of the election shall certify to the board of county commissioners the results of said election. No person shall be qualified to vote at such election who has not attained legal age, who is not an owner of property within the boundaries of said district as defined by the board, and whose name does not appear on the last completed assessment roll of the county. Only qualified, registered electors residing within the proposed hospital district, who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state and county taxes shall have the right to vote on the question of the creation of the hospital district.

History: En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969.

Amendments

The 1969 amendment added the last sentence; and made numerous wording changes as follows: in the first sentence, deleted "or not" after "designate whether"; in the second sentence, substituted

"date for such election" for "time and place for such election" and deleted "in said order" before "appoint and designate"; in the proviso of the third sentence, inserted "if a special election is held" and deleted "o'clock" before "a. m." and "p. m."; and in the sixth sentence, substituted "legal age" for "twenty-one (21) years of age."

16-4306. Favorable vote—commissioners finally to organize district. In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within ten (10) days after the election, by resolution certify such result, and proceed with the organization of such district as herein specified. After twenty (20) days from the passage of such resolution, the validity of the creation of such hospital district and the regularity

of all proceedings preliminary thereto, shall not be questioned or asserted in any legal action.

History: En. Sec. 6, Ch. 155, L. 1953;
amd. Sec. 6, Ch. 257, L. 1969.

Amendments

The 1969 amendment added the second sentence.

16-4307. Government of district—appointment, election and terms of trustees. Said hospital district shall be governed and managed by a board of three (3) trustees, elected by the registered electors residing in the district. The trustees must be elected from among the registered electors qualified to vote at general elections within said district. The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, shall qualify upon the organization of the district, if created, and the trustees may be nominated and have their names appear upon the ballots upon the filing with the board of county commissioners of a petition signed by any five (5) qualified electors of the district. Any elector may sign as many nominating petitions as there are persons to be elected. The trustees elected for the first board shall serve for terms commencing upon their being elected and qualified and terminating one (1), two (2) and three (3) years respectively, from the first Monday in May following their election, and until their respective successors shall be elected and qualify. Annually thereafter there may be elected a trustee to serve for a term of three (3) years and until his successor shall be qualified and such term of three (3) years shall commence on the first Monday in May following the said trustee's election. All elections and nominations for election of trustees thereafter, shall be conducted by said qualified voters in the same manner as provided by the laws of the state of Montana for the election of school trustees of a second or third class school district, provided that wherever in the said laws of the state of Montana it is provided that certain action shall be performed or filings made with the clerk of the school board, the trustees or the board of trustees of the school district or the county superintendent of schools, the same shall, for the purposes of this act, be taken to refer to the clerk of the board of trustees of the public hospital district, the trustees or the board of trustees of the public hospital district or the county clerk, respectively. If there is no nomination petition filed it shall not be necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term, the term to be the same as if the trustee were elected. The trustees at their first meeting shall adopt bylaws for the government and management of the district, and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number. The trustees shall serve without pay. A vacancy upon the board of trustees, or in the office of clerk shall be filled by appointment by the remaining members and the appointee shall serve until the next ensuing election for trustees.

History: En. Sec. 7, Ch. 155, L. 1953;
amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7,
Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L.
1971.

Amendments

The 1969 amendment, in the first sentence, substituted "registered electors residing in the district" for "persons within the district who have the same qualifications as voters upon the question of

'creation of the district' "; divided the former second sentence into the present second and fifth sentences; in the second sentence, substituted "registered electors qualified to vote at general elections" for "freeholders residing within said district"; and rearranged the order of the sentences.

The 1971 amendment substituted "may" for "shall" in the sixth sentence; inserted the present eighth sentence, providing for the appointment of a trustee for a hospital district when no nominations are submitted; and made minor changes in punctuation and phraseology.

16-4308. Powers of district. A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

(1) Employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits, or by such fees as may be agreed upon;

(2) Cause reports, plans, studies, and recommendations to be prepared;

(3) Lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, conditional sales contract, or otherwise, and acquire real or personal property by gift;

(4) Lease or construct, equip and furnish necessary buildings and grounds and maintain the same;

(5) Adopt, by resolution, rules and regulations for the operation and administration of any and all hospital facilities under its control, and for the admission of persons thereto;

(6) Impose by resolution, and collect charges for all services and facilities provided and made available by it;

(7) Levy taxes as hereinafter prescribed;

(8) Borrow money and issue bonds as hereinafter prescribed;

(9) Procure insurance against liability of the district or its officers and employees or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

(10) Sell or lease any of its facilities or equipment as may be deemed expedient;

(11) Cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants. Such a hospital district must admit to its facilities persons without regard to race, color, or sex, but such obligation shall not prevent the board of trustees of such hospital district from establishing reasonable minimum rates for hospital quarters, services and supplies; indigents needing such services, and for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals, on terms and rates prescribed or authorized by law. A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension and betterment of hospital facilities, and to provide an adequate working capital for a new hospital, but the amount of bonds issued for such purpose and outstanding at any time shall not

exceed five per cent (5%) of taxable property therein, as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds. Such bonds shall be authorized, sold, issued and provision made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of second or third class school districts by sections 75-3903 through 75-3934. Nothing herein shall be construed to preclude the provisions of sections 69-5301 through 69-5313 allowing the state to apply for and accept federal funds.

History: En. Sec. 8, Ch. 155, L. 1953;
amd. Sec. 8, Ch. 257, L. 1969.

Amendment

The 1969 amendment rewrote this section, rewording the general grant of powers, placing it at the beginning of the section, and adding additional specified powers. For previous text, see parent volume.

Compiler's Notes

Sections 75-3903 through 75-3934, referred to in this section, were repealed by sec. 496, Ch. 5, Laws of 1971. For present law relating to school district bonds, see secs. 75-7101 to 75-7132.

16-4309. Budget and tax levy. The board of hospital trustees shall, annually, present their budget to the board of county commissioners at the regular budget meetings as prescribed by law, and therewith certify the amount of money necessary and proper for the ensuing year. The board of county commissioners must, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees. The tax so levied for all hospital district purposes other than payment of bonded indebtedness shall not in any year exceed three (3) mills on each dollar of taxable valuation of property within said district.

History: En. Sec. 9, Ch. 155, L. 1953;
amd. Sec. 9, Ch. 257, L. 1969.

Amendments

The 1969 amendment inserted "for all hospital district purposes other than payment of bonded indebtedness" after "The tax so levied" in the last sentence.

16-4310. Tax collections and funds. The procedures for the collection of the tax shall be in accordance with the existing laws of the state of Montana. The funds collected under the tax levy shall be held by the county treasurer who shall be, ex officio, the treasurer for the hospital district and such treasurer shall keep a detailed account of all tax moneys paid into the fund, of all other moneys from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by the majority of its membership.

History: En. Sec. 10, Ch. 155, L. 1953;
amd. Sec. 2, Ch. 97, L. 1955; amd. Sec. 10,
Ch. 257, L. 1969.

Amendments

The 1969 amendment substituted the

caption "Tax collections and fines" for "Regulations"; and deleted the former first sentence which read, "The trustees shall make proper rules and regulations for the management of such hospitals."

16-4311. Withdrawal of portion of district, petition for. Any portion of a public hospital district may be withdrawn therefrom as in this section provided, upon receipt of a petition signed by fifty-one per centum (51%)

of the taxpayers, or more, residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district. The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition which time shall not be more than four (4) weeks after the receipt thereof. The board shall, at least two (2) weeks prior to the time so fixed, publish a notice of such hearing in two (2) successive issues of a newspaper published in the county. No petition for withdrawal shall be entertained or acted upon by the board, unless the same is filed before the first Monday in March of any year. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider the petition and all objections thereto, and pass upon the merits thereof, and make its order in accordance therewith. Any withdrawal shall be effective as of March 1 following the issuance of the withdrawal order. Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the supreme court of Montana. All taxable property within the withdrawn area shall remain subject to taxation for any bonded indebtedness of the hospital district existing as of the effective date of the withdrawal, to the same extent as it would have been subject if not withdrawn.

History: En. Sec. 11, Ch. 155, L. 1953; Amendments
amd. Sec. 11, Ch. 257, L. 1969.

The 1969 amendment inserted the seventh sentence and added the last sentence.

16-4312. Alteration of boundaries—annexation. The boundaries of any such public hospital district may be altered and outlying districts be annexed from territory contiguous thereto in the following manner: A petition signed by ten per centum (10%) or more freeholders within the territory proposed to be annexed, or by a majority of such freeholders if there are less than twenty-five (25) residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated. At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published in two (2) successive issues of a newspaper published in the county prior to the date fixed by said board for the hearing of said petition, which date shall be not less than four (4) weeks after the filing of such petition. Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district. Said board of county commissioners shall have the power by order entered on its minutes to grant said petition either in whole or in part, and by order entered on its minutes to alter the boundaries of said public hospital district and to annex thereto all, or such portion of said area or territory described in said petition as will be benefited thereby. This territory shall become and be a part of such public hospital district on the date fixed

in the order of annexation, and shall be subject to the taxes authorized by this act, including taxes for any pre-existing indebtedness, together with the pre-existing area of said district, and such taxes shall be uniform for the whole area and territory in the district, as enlarged.

History: En. Sec. 12, Ch. 155, L. 1953;
amd. Sec. 12, Ch. 257, L. 1969.

Amendments

The 1969 amendment, in the last sen-

ence, inserted "on the date fixed in the order of annexation," substituted "taxes" for "tax" in two instances, and inserted "including taxes for any pre-existing indebtedness."

16-4313. Dissolution of district. At any time after five (5) years from the date any public hospital district is created, such district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per centum (51%) of the owners of property lying within such district as shown by the last completed assessment roll. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) separate public places within said district for at least two (2) weeks prior to the hearing, and which notice shall, also, be published for at least two (2) successive issues in a newspaper published in the county prior to such hearing. If upon such hearing the commissioners find such petition to be sufficient and that the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. Such order shall be filed, of record, and the dissolution shall be effective for all purposes six (6) months after the date of filing said order of dissolution, providing that at or before such time the board of trustees of said district certifies to the board of county commissioners that all debts and obligations of the district have been paid, discharged or irrevocably settled, together with legal proof thereof. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged or irrevocably settled, shall become the property of the county.

History: En. Sec. 13, Ch. 155, L. 1953;
amd. Sec. 13, Ch. 257, L. 1969.

Amendments

The 1969 amendment added the last sentence.

CHAPTER 44—METROPOLITAN SANITARY AND/OR STORM SEWER SYSTEMS

Section

16-4416. Rates, charges and rentals for services.

16-4416. Rates, charges and rentals for services. The board of county commissioners shall have full power and authority by ordinance or resolution to fix and establish just and equitable rates, charges and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated, controlled, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this chapter. Such rates, charges and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and may take

into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The board of county commissioners shall have authority, by resolution and after public hearing, to fix and establish the sewer rates, charges and rentals at amounts sufficient in each year, not to exceed seven dollars (\$7) per unit user per year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system; to fix and establish an additional charge not to exceed seven dollars (\$7) per unit user per year for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district not in excess of two (2) mills on each dollar of taxable valuation to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in section 16-4417.

History: En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969.

Amendments

The 1969 amendment, in the first sentence, substituted "operated, controlled, and under the jurisdiction of" for "construction in and for"; in the third sen-

tence, inserted "public" before "hearing," raised the maximum per unit user charge from \$5 per year to \$7, raised the maximum additional charge from \$3 to \$7, substituted "for the operation and maintenance * * * a sewage treatment plant" for "reasonable expense of operation and maintenance of a sewage treatment plant" and made minor changes in phraseology.

CHAPTER 45—COUNTY WATER AND SEWER DISTRICTS

Section

- 16-4517. Bonded indebtedness.
- 16-4522. Sixty per cent vote necessary.
- 16-4535. Elections may be combined.

16-4517. Bonded indebtedness. Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty (40) years, and the proposition to be submitted to the electors.

History: En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "and the

maximum rate of interest to be paid, which shall not exceed seven per cent (7%) per annum" before "and the proposition to be submitted to the electors" at the end of the section.

16-4522. Sixty per cent vote necessary. If from such returns it appears that sixty per cent (60%) or more of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

History: En. Sec. 22, Ch. 242, L. 1957;
amd. Sec. 1, Ch. 335, L. 1969.

Effective Date

Section 2 of Ch. 335, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

Amendments

The 1969 amendment substituted "sixty per cent (60%) or more" for "more than two-thirds."

16-4535. Elections may be combined. The board of commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness, so that the electors of the district may vote on all of these matters on the same date and at the same time. If the elections are combined the board of commissioners shall so declare by resolution containing the provisions required by 16-4517. Candidates for the office of director shall be nominated in the manner required by 16-4507. Whenever the elections are combined, notice of the election, the names of the candidates and the details concerning the bonded indebtedness may be given in the manner prescribed by 16-4505 and 16-4507 or either of them.

History: En. 16-4535 by Sec. 1, Ch. 109, L. 1969.

Effective Date

Section 2 of Ch. 109, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

Title of Act

An act allowing county water and sewer district elections to be combined.

CHAPTER 47—ZONING DISTRICTS

Section

- 16-4702. Recommendations by county planning board and city-county planning board.
- 16-4703. Establishment of districts—regulations for land use—scope—uniformity.
- 16-4705. Procedure for adoption of regulations and boundaries.
- 16-4711. Interim zoning map or regulation.

16-4702. Recommendations by county planning board and city-county planning board. The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only. This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

History: En. Sec. 2, Ch. 246, L. 1963;
amd. Sec. 17, Ch. 273, L. 1971.

second sentences; deleted "to act as a zoning commission" before "to recommend" in the first sentence; added the last sentence; and made minor changes in phraseology.

Amendments

The 1971 amendment inserted "county planning board and the" in the first and

16-4703. Establishment of districts—regulations for land use—scope—uniformity. (1) Within the unincorporated portions of a jurisdictional area which has been established under provisions of section 11-3830 or section 11-3830.2, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or parts of the jurisdictional area.

(2) to (4) * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 246, L. 1963; tion 11-3830 or section 11-3830.2" for
amd. Sec. 18, Ch. 273, L. 1971. "section 11-3825, and which portions are
contiguous to a city" in subsection (1).

Amendments

The 1971 amendment substituted "sec-

16-4705. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) the time and place of the public hearing;
- (d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing the board of county commissioners shall review the proposals of the planning board and shall make such revisions or amendments as it may deem proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for thirty (30) days after first publication of this notice the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

(6) Within thirty (30) days after the expiration of the protest period the board of county commissioners may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if forty (40) percent of the freeholders within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board of county commissioners shall not adopt

the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year.

History: En. Sec. 5, Ch. 246, L. 1963; ty commissioners" after "the board" in amd. Sec. 19, Ch. 273, L. 1971. seven places; and made minor changes in punctuation.

Amendments

The 1971 amendment inserted "of coun-

16-4711. Interim zoning map or regulation. If a county is conducting, or in good faith intends to conduct studies within a reasonable time, or has held or is holding a hearing for the purpose of considering a master plan or zoning regulations or an amendment, extension, or addition to either pursuant to this chapter, the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency. Such interim resolution shall be limited to one (1) year from the date it becomes effective. The board of county commissioners may extend such interim resolution for one (1) year, but not more than one (1) such extension may be made.

History: En. 16-4711 by Sec. 20, Ch. 273, L. 1971.

all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Separability Clause

Section 21 of Ch. 273, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid,

CHAPTER 48—COUNTY PARKS

Section

- 16-4801. County board of park commissioners—qualifications and terms of commissioners—meetings—officers of board—accounts and records.
- 16-4801.1. Secretary to be appointed—designation of superintendent of parks.
- 16-4803. Receipt and disbursement of park funds—separate fund in treasury—liability of county restricted.
- 16-4804. Meetings of park commissioners—compensation of commissioners—contracts of board—failure of commissioner to qualify or perform.
- 16-4805. Auditing and allowance of claims against county.

16-4801. County board of park commissioners—qualifications and terms of commissioners—meetings—officers of board—accounts and records. There may be created in all counties a board of park commissioners, which shall be composed of the county commissioners and six (6) other persons appointed by county commissioners. The six (6) persons and three (3) commissioners so to be appointed shall have the same qualifications for the office of park commissioners as are required by section 11-710, R.C.M., 1947, for the office of county commissioners. The term of office of each park commissioner shall be three (3) years with and after the first Monday of May of the year in which he is appointed, and until his successor is appointed and qualified, save and except that two (2) of the commissioners first appointed shall hold office for the period of one (1) year, two (2) for two (2) years, and two (2) for three (3) years, with and after the first Monday of May, 1967, and until their

successors are appointed and qualified. Such board of park commissioners shall constitute a department of the county government with the powers in this act provided. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe to the oath provided by section 59-413, which oath shall be filed in the office of the county clerk and recorder.

On the first Monday of May in each year, said board of park commissioners shall meet and organize by electing one (1) of their number president, and one (1) of their number vice-president, who shall hold their offices respectively for the term of one (1) year. The president, and in his absence, the vice-president, shall preside at all meetings of the board, and shall countersign all warrants issued by the board.

History: En. Sec. 1, Ch. 306, L. 1967;
amd. Sec. 1, Ch. 290, L. 1971.

end of the second paragraph provisions relating to county clerk as ex officio clerk of the board, for previous text of which see parent volume.

Amendments

The 1971 amendment deleted from the

16-4801.1. Secretary to be appointed—designation of superintendent of parks. (1) The board of park commissioners shall have the power to employ a secretary, not a member of the board, who shall be the clerk of the board of park commissioners and attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called "proceedings of the board of park commissioners of (entitled) county." It shall be the duty of the secretary to keep an accurate account of all transactions of said board, and to make and submit in writing to said board at its first meeting in May in each year a report under oath showing in detail all the receipts and disbursements made by the board during the previous calendar year, which report shall be in duplicate, and after being approved by said board, one (1) of said duplicates shall be filed in the office of the county clerk and recorder, and one (1) in the office of the county treasurer, and, he shall perform such other services as the board from time to time shall require. In the absence of the secretary at any meeting held by the board, it shall designate one (1) of its members as clerk pro tem to keep the minutes of said meeting, which minutes shall be delivered to the secretary to be transcribed into the record book of said board. The minutes of said meeting in said record book, when approved by the board, shall be prima facie evidence of the matters and things there recited in any court in this state.

(2) The board of park commissioners shall have the power to employ a park superintendent, who may also be the secretary of the park board, and whose duties shall be of a managerial capacity, and who shall attend each regular meeting of the said board and report, either in writing or orally as the board may require, as to the activities, functions, and progress of whatever nature pertaining to the park lands and facilities over which he has supervision.

History: En. Sec. 5, Ch. 290, L. 1971.

Effective Date

Section 6 of Ch. 290, Laws 1971 pro-

vided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

16-4803. Receipt and disbursement of park funds—separate fund in treasury—liability of county restricted. All moneys paid out by the park commissioners under the provisions of this act shall be by warrant drawn upon the county treasurer, which may be signed by the secretary and countersigned by the president, or, in his absence, by the vice-president of the board of park commissioners, or, upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum are in attendance and voting, and with due notice and report being made to the board of county commissioners, payments so authorized may be made by warrant drawn upon the county treasurer signed by the chairman of the board of county commissioners and countersigned by the county clerk and recorder. All moneys raised by tax for park purposes, or received by the board of park commissioners for the sale of hay, trees, plants, or from the use of or leasing of lands and facilities shall be paid into the county treasury, and the county treasurer shall keep all such moneys in a separate fund to be known as the "park fund." Such board shall have no power to incur liability on behalf of the county in excess of moneys on hand in, or taxes actually levied for, said park fund.

History: En. Sec. 3, Ch. 306, L. 1967; be signed by the secretary * * * county
amd. Sec. 2, Ch. 290, L. 1971. clerk and recorder" for "shall be signed
by the county clerk * * * park commis-
sioners" in the first sentence.

Amendments

The 1971 amendment substituted "may

16-4804. Meetings of park commissioners—compensation of commissioners—contracts of board—failure of commissioner to qualify or perform. The board of park commissioners shall hold an annual meeting on the first Monday of May, and a meeting at least once in each month in each year, at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president, or, in his absence, the vice-president, upon giving to each member of said board at least twenty-four (24) hours' notice in writing of the time and place of holding such meeting. A member of the board by his appearance at a special meeting shall waive the requirement of written notice. A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board. No park commissioner shall receive compensation for his services rendered under the provisions of this act, but the actual and necessary expense incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board. No park commissioner, directly or indirectly, shall be interested in, or benefit by, any contract made by the board or by its authority, or in the furnishing of any supplies for the use of the board. Any park commissioner who shall refuse or neglect, for the period of three (3) consecutive months, to attend the meetings of said board without leave of absence from said board, or who shall fail for the period of twenty (20) days from and after his appointment to qualify as in this act provided, shall be deemed to have vacated his office, and thereupon his successor may be appointed. All contracts made by said board shall be in the name of the county, and

shall be signed by the president, or, in his absence, by the vice-president, of said board, or, upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum are in attendance and voting, and with due notice and report being made to the board of county commissioners, such contracts may be signed by the chairman of the board of county commissioners and attested by the county clerk and recorder.

History: En. Sec. 4, Ch. 306, L. 1967; dent, or, in his absence * * * county
amd. Sec. 3, Ch. 290, L. 1971. clerk and recorder" for "county clerk

Amendments

The 1971 amendment substituted "presi-

16-4805. Auditing and allowance of claims against county. The board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the county, liability for which shall have been incurred by said board; but no claim shall be audited or paid until an itemized account of such claim in writing, signed by the claimant or his or its authorized agent, shall have been filed in the office of the secretary of said board; provided, that no order or resolution providing for the payment or expenditure of money, or creating an obligation in excess of the sum of twenty-five dollars (\$25), or authorizing the making of any contract, shall be passed or adopted except by a ye and nay vote, which vote shall be recorded in full in the minutes of the secretary.

History: En. Sec. 5, Ch. 306, L. 1967; by the claimant * * * of said board" for
amd. Sec. 4, Ch. 290, L. 1971. "verified by the oath * * * said board"

Amendments

The 1971 amendment substituted "signed" end of the section.

REVISED CODES OF MONTANA

VOLUME 2

Part 2

1971 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 2 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2
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For index see pocket supplement to Replacement Volume 9

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TITLE 17—DAMAGES AND RELIEF

CHAPTER 2—COMPENSATORY RELIEF—DAMAGES—INTEREST—EXEMPLARY DAMAGES

17-201. (8659) Person suffering detriment may recover damages.

Disability Insurance Policy

Insured was entitled to sue insurance company for actual damages for default on policy requiring it to pay car installments upon insured's disability as well as

for exemplary damages since default was in violation of statute requiring prompt payment of claim. *State ex rel. Larson v. District Court, Eighth Judicial District*, 149 M 131, 423 P 2d 598.

17-204. (8662) Person entitled to recover damages may recover interest, etc.

Time Interest Commences Running

Interest commenced running upon filing of complaint against surety company on bond where no demand had been made on surety until filing of complaint; such interest was due notwithstanding surety's

contention that since damages were not certain until time of filing of judgment, it could not be charged with interest from time of filing of complaint. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

17-208. (8666) Exemplary damages, etc.

Attractive Nuisance

In attractive nuisance case, parents of deceased child were not entitled to exemplary damages in absence of proof of willful disregard of duty or indifference on part of contractor which would permit inference of malice; exemplary damages are extraordinary in nature and are allowed as punishment where something more than mere negligence is alleged and proven. *Gagnier v. Curran Constr. Co.*, 151 M 468, 443 P 2d 894.

ments upon insured's disability as well as for exemplary damages since default was in violation of statute requiring prompt payment of claim. *State ex rel. Larson v. District Court, Eighth Judicial District*, 149 M 131, 423 P 2d 598.

Slander

Where homeowner's slanderous statements that builder had cheated him were made to numerous people in community over two-year period and where speaker stated that "he was going to tack his [builder's] hide to the wall," jury had basis for finding sufficient malice to justify award of punitive damages. *McCusker v. Roberts*, 152 M 513, 452 P 2d 408.

Water Rights Dispute

In action concerning disputed water rights plaintiff was not entitled to punitive damages under this section since defendants were not found to be guilty of oppression, fraud or malice; further, exemplary or punitive damages cannot be recovered in absence of award of actual damages. *Smith v. Krutar*, 153 M 325, 457 P 2d 459.

Insurance Policy Default

Insured was entitled to sue insurance company for actual damages for default on policy requiring it to pay car install-

CHAPTER 3—MEASURE OF DAMAGES

17-301. (8667) Measure of damages for breach of contract.**Sale of Land**

In computing damages for sale of land constituting constructive fraud in that representations of acreage exceeded actual acreage, buyer was not entitled to damages for loss of profits based on number of cows which total ranch would support

but was entitled to damages for missing acreage computed from contract value on per acre basis without distinction between deeded and leased land or fenced or open land. *Hardin v. Hill*, 149 M 68, 423 P 2d 309.

CHAPTER 4—DAMAGES FOR WRONGS

17-401. (8686) Breach of obligation other than contract.**Aggravation of Pre-existing Injury**

Measure of damages in tort action includes damages for aggravation of pre-existing condition, but injured party is not entitled to recover damages which would have resulted from his previous condition even without aggravation; however, where it was reasonable to suppose

that in absence of accident, intervertebral disc would have herniated within not more than two years, still injured party was entitled to damages resulting from hastening of back condition, including pain and suffering during additional period of disability reasonably caused by accident. *Kegel v. United States*, 289 F Supp 790.

CHAPTER 8—SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

17-801. (8714) In what cases compelled.**Inadequate Relief by Pecuniary Compensation**

Under principle that monetary damages are presumed inadequate as remedy in contract for purchase of land, purchaser was entitled to specific performance not-

withstanding seller's contention that presumption was rebutted by testimony of purchaser that he could ascertain damages if not allowed to obtain the property. *Brown v. Griffin*, 150 M 498, 436 P 2d 695.

17-804. (8717) Distinction between real and personal property.**Rebuttable Presumption**

Under principle that monetary damages are presumed inadequate as remedy in contract for purchase of land, purchaser was entitled to specific performance not-

withstanding seller's contention that presumption was rebutted by testimony of purchaser that he could ascertain damages if not allowed to obtain the property. *Brown v. Griffin*, 150 M 498, 436 P 2d 695.

TITLE 18—DEBTOR AND CREDITOR

Chapter

4. Debt adjusters, 18-401 to 18-403.

CHAPTER 1—DEBTOR AND CREDITOR—DEFINITIONS AND GENERAL PROVISIONS

18-104. (8601) Payments in preference.

Contingent Liability

Debtor's sale of property to pay all creditors except one did not violate statute in light of fact that excepted debt was

contingent liability which debtor could reasonably anticipate would not become due and owing. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

CHAPTER 4—DEBT ADJUSTERS

Section

18-401. Definitions.

18-402. Prohibition—penalty.

18-403. Exemptions.

18-401. Definitions. As used in this act the following words and terms shall have the following meanings unless the context clearly requires a different meaning. The singular shall include the plural and the masculine gender the feminine gender.

(1) "Person" means an individual, corporation, partnership, trust, firm, association or other legal entity.

(2) "Debt adjusting" means the making of a contract, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money or other thing of value periodically to the person engaged in the debt-adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon. The term includes debt adjustment, budget counseling, debt management or debt-pooling service or the holding of oneself out, by words of similar import, as providing services to debtors in the management of their debts and contracting with the debtor for a fee to (a) effect the adjustment, compromise, or discharge of any account, note, or other indebtedness, of the debtor, or (b) receive from the debtor and disperse to his creditors any money or other thing of value.

History: En. Sec. 1, Ch. 300, L. 1969.

adjusting when conducted for profit, making certain acts unlawful, and prescribing penalties therefor; excluding certain persons from the provisions of this act.

Title of Act

An act to prohibit the business of debt

18-402. Prohibition—penalty. No person shall engage in the business of debt adjusting. Whoever shall engage in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500), or be imprisoned not more than six (6) months, or both.

History: En. Sec. 2, Ch. 300, L. 1969.

18-403. Exemptions. This act shall not apply to:

(1) Those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state.

(2) Banks and fiduciaries, as duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business.

(3) Title insurers and abstract companies, while doing an escrow business.

(4) Judicial officers or others acting under court orders.

(5) Nonprofit or charitable corporations or associations engaged in debt adjusting.

(6) Those situations involving debt adjusting incurred incidentally in connection with the lawful practice as a certified public accountant.

(7) Bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments.

(8) Employers for their employees.

(9) Any person (other than a collection agency) whose maximum fees or charges for all services in adjusting the debtor's debts are ten per cent (10%) of the amounts as paid by the debtor.

(10) Any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting the debts.

History: En. Sec. 3, Ch. 300, L. 1969.

Effective Date

Section 4 of Ch. 300, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

TITLE 19—DEFINITIONS AND GENERAL PROVISIONS

Chapter

1. Definitions and construction of terms—holidays—other general provisions, 19-103.1, 19-107, 19-123.

CHAPTER 1—DEFINITIONS AND CONSTRUCTION OF TERMS—HOLIDAYS— OTHER GENERAL PROVISIONS

Section

- 19-103.1. **Printing defined.**
- 19-107. **Legal holidays and business days defined.**
- 19-123. **State gem stones.**

19-103. (16) Certain words defined.

Negligence

In action to recover damages for reduced yield of dryland alfalfa seed allegedly caused by negligence of defendants in allowing weeds from defendant's field to blow across fields of plaintiff during windstorm, trial court erred by not directing verdict for defendant since evidence failed to show breach of duty by defendant and therefore did not establish

prima facie case of negligence. *Mang v. Eliasson*, 153 M 431, 458 P 2d 777.

Property

Under this section, "property," as used in section 67-808, includes both real and personal property. *State ex rel. Tucker v. District Court of Thirteenth Judicial District in and for Stillwater County*, — M —, 468 P 2d 773.

19-103.1. Printing defined. As used in the constitution and laws of the state of Montana, printing is the act of reproducing a design on a surface by any process.

History: En. Sec. 1, Ch. 267, L. 1969.

as an act of reproducing a design on a surface by any process.

Title of Act

An act to define printing in Montana

19-107. (10) Legal holidays and business days defined. The following are legal holidays in the state of Montana:

- (1) Each Sunday.
- (2) New Year's Day, January 1.
- (3) Lincoln's Birthday, February 12.
- (4) Washington's Birthday, the third Monday in February.
- (5) Memorial Day, the last Monday in May.
- (6) Independence Day, July 4.
- (7) Labor Day, the first Monday in September.
- (8) Columbus Day, the second Monday in October.
- (9) Veterans' Day, the fourth Monday in October.
- (10) Thanksgiving Day, the fourth Thursday in November.
- (11) Christmas Day, December 25.
- (12) State general election day.

If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days.

Whenever any bank in the state of Montana elects to remain closed

and refrains from the transaction of business on Saturday, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays:

- (1) Each Sunday.
- (2) New Year's Day, January 1.
- (3) Memorial Day, the last Monday in May.
- (4) Independence Day, July 4.
- (5) Labor Day, the first Monday in September.
- (6) Thanksgiving Day, the fourth Thursday in November.
- (7) Christmas Day, December 25.

(8) On such days as banks are closed in accordance with sections 1 through 5 [5-1058 to 5-1062] of this act.

Any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing or not, to observe as a holiday and to be closed on any day upon which a general election is held throughout the state of Montana and on Veterans' Day, the fourth Monday in October, and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located.

History: Ap. p. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, 1921; re-en. Sec. 10, R. C. M. 1921; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971. Cal. Pol. C. Secs. 10-11.

Amendments

The 1969 amendment revised and reworded the section to enumerate the lists of legal and authorized bank holidays and made Memorial Day the last Monday in May instead of May thirtieth, Columbus Day the second Monday in October instead of October twelfth, and Veterans'

Day the fourth Monday in October instead of November eleventh.

The 1971 amendment added to the list of holidays for banks closed on Saturdays subdivision (8) relating to days banks are closed during emergencies and special observances.

Effective Date

Section 2 of Ch. 89, Laws 1969 read "This act is effective January 1, 1971."

Cross-References

Closing of banks in emergency or for special observances, secs. 5-1058 to 5-1062.

19-123. State gem stones. The sapphire and the Montana agate are the official Montana state gem stones.

History: En. Sec. 1, Ch. 20, L. 1969.

Montana agate the official Montana state gem stones.

Title of Act

An act naming the sapphire and the

TITLE 21—DIVORCE

CHAPTER 1—DISSOLUTION OF MARRIAGE—DIVORCE

21-138. (5770) Orders respecting custody of children.

Modification of Amount of Award

District court was free to modify original decree to provide for child-support

payments which were lower than those set forth in separation agreement. *Gessell v. Jones*, 149 M 418, 427 P 2d 295.

21-139. (5771) Support of wife and children, etc.

Alimony—Modification of Decree

Trial court acted properly in ordering husband, who had stopped paying alimony because of alleged changes in financial standing, to pay back alimony in full, since under this section modification of alimony applies only to future installments. *Porter v. Porter*, — M —, 473 P 2d 538.

Modification of Decree for Support

Under this section court of sister state entering valid custody order retains continuing jurisdiction to modify such award after party has changed domicile to this state since change in child's domicile does not, in itself, deprive court of sister state of its jurisdiction; courts of either state may possess jurisdiction resulting in concurrent jurisdiction of matter. *Corkill v. Cloninger*, 153 M 142, 454 P 2d 911.

21-142. (5774) Property may be subjected to support, etc.

Survival of Support Obligation.

District court may make support obligation a continuing one that survives the

father's death and is enforceable against his estate. *Horning v. Estate of Lagerquist*, — M —, 473 P 2d 541.

TITLE 22—DOWER

Chapter

1. Dower, 22-108.

CHAPTER 1—DOWER

Section

22-108. Renunciation and form of.

22-108. (5820) Renunciation and form of. When a woman is entitled to an election under this chapter, she shall be deemed to have taken such devise, unless, within six months after the authentication or probate of the will, she shall deliver or transmit to the district court of the proper county a written renunciation, which may be in the following form, to wit: "I, A B, widow of C D, late of the county of _____, state of Montana, do hereby renounce and quit all claims to the benefit of any bequest or devise made to me by the last will and testament of my said deceased husband, which has been exhibited and proved according to law (or otherwise, as the case may be), and I do elect to take in lieu thereof my dower, or legal share of the estate of my said husband," which said letter of renunciation shall be filed in the office of the clerk of the district court, and shall operate as a complete bar against any claim which such widow may afterwards set up to any provision which may have been thus made for her in the will of any testator, in lieu of dower; and by thus renouncing all claims as aforesaid, such widow shall thereupon be entitled to dower in the lands or share in the personal estate of her husband.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of Congress, March 2, 1867. This section en. Sec. 8, p. 65, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 235, Civ. C. 1895; re-en. Sec. 3715, Rev. C. 1907; re-en. Sec. 5820, R. C. M. 1921; amd. Sec. 1, Ch. 150, L. 1969.

Amendments

The 1969 amendment shortened the time for renunciation from one year to six months.

Invalid Renunciation

Widow's renunciation of her husband's will was not valid, even though widow purchased family home from executor and executed a deed quitclaiming all interest in real and personal property of the estate, and even though there may have been no fraud, misrepresentation or breach of confidential relationship, in view of evidence that widow did not know her rights, did not understand terms of will and did not understand the significance of signing the quitclaim deed. *Ericksen v. Ericksen*, 152 M 179, 448 P 2d 144.

TITLE 23—ELECTIONS

Chapter

1. Time of holding elections—proclamations, Repealed—Section 248, Chapter 368, Laws of 1969.
2. Publication of questions submitted to popular vote, Repealed—Section 248, Chapter 368, Laws of 1969.
3. Qualifications and privileges of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
4. Election precincts, Repealed—Section 248, Chapter 368, Laws of 1969.
5. Registration of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
6. Judges and clerks of elections, Repealed—Section 248, Chapter 368, Laws of 1969.
7. Election supplies, Repealed—Section 248, Chapter 368, Laws of 1969.
8. Nomination of candidates for special elections by convention or primary meetings or by electors, Repealed—Section 248, Chapter 368, Laws of 1969.
9. Party nominations by direct vote—the direct primary, Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
10. Political parties, Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
11. Ballots, preparation and form, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
12. Conducting elections—the polls—voting and ballots, Repealed—Section 248, Chapter 368, Laws of 1969.
13. Voting by absent electors, Repealed—Section 248, Chapter 368, Laws of 1969.
14. Voting by absent electors in United States service, Repealed—Section 248, Chapter 368, Laws of 1969.
15. Registration of electors absent from county of their residence, Repealed—Section 248, Chapter 368, Laws of 1969.
16. Voting machines—conduct of election when used, Repealed—Section 248, Chapter 368, Laws of 1969.
17. Election returns, Repealed—Section 248, Chapter 368, Laws of 1969.
18. Canvass of election returns—results and certificates, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
19. Failure of elections—proceedings on tie vote, Repealed—Section 248, Chapter 368, Laws of 1969.
20. Nonpartisan nomination and election of judges of supreme court and district courts, Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368, Laws of 1969.
21. Presidential electors, how chosen—duties, Repealed—Section 248, Chapter 368, Laws of 1969.
22. Members of Congress—elections and vacancies, Repealed—Section 248, Chapter 368, Laws of 1969.
23. Recount of ballots—results, Repealed—Section 248, Chapter 368, Laws of 1969.
24. Conventions to ratify proposed amendments to constitution of the United States, Repealed—Section 248, Chapter 368, Laws of 1969.
25. Electronic voting systems, Repealed—Section 248, Chapter 368, Laws of 1969.
26. Definitions and general provisions, 23-2601 to 23-2606.
27. Qualifications and privileges of electors, 23-2701, 23-2701.1, 23-2704, 23-2705.
28. Publication of questions submitted to popular vote, 23-2801, 23-2802.
29. Proclamations and publications, 23-2901 to 23-2904.
30. Registration of electors, 23-3001 to 23-3004, 23-3004.1, 23-3005 to 23-3029.
31. Election precincts, 23-3101 to 23-3103.
32. Judges and clerks of elections, 23-3201 to 23-3207.
33. Primary elections and nominations by certificate, 23-3301 to 23-3321.
34. Political parties, committeemen and committees, 23-3401 to 23-3407.
35. Election supplies and ballots, 23-3501 to 23-3517.
36. Conduct of elections—the polls—voting and ballots, 23-3601 to 23-3618.
37. Absentee voting and registration, 23-3701 to 23-3724.
38. Voting machines, 23-3801 to 23-3822.
39. Electronic voting systems, 23-3901 to 23-3907.
40. Canvass of votes—returns and certificates, 23-4001 to 23-4019.
41. Recounts, 23-4101 to 23-4122.
42. Contests of bond elections, 23-4201, 23-4202.

- 43. Presidential electors, 23-4301 to 23-4307.
- 44. Members of Congress—elections and vacancies, 23-4401 to 23-4404.
- 45. Nonpartisan nomination and election of judges, 23-4501 to 23-4511.
- 46. Conventions to ratify amendments to constitution of the United States, 23-4601 to 23-4611.

CHAPTER 1

TIME OF HOLDING ELECTIONS—PROCLAMATIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-101 to 23-106. (531 to 536) Repealed.

Repeal

Sections 23-101 to 23-106 (Secs. 1150, 1151, 1160 to 1163, Pol. C. 1895), relating

to the time of holding elections and election proclamations, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 2

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-201, 23-202. (537.1, 538) Repealed.

Repeal

Sections 23-201 and 23-202 (Sec. 1, Ch. 130, L. 1919; Sec. 1, Ch. 62, L. 1927; Sec. 1, Ch. 104, L. 1945), relating to publication of proposed constitutional amend-

ments and questions to be submitted to the people of the county or municipality, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 3

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-301 to 23-311. (539 to 544) Repealed.

Repeal

Sections 23-301 to 23-311 (Secs. 1180, 1181, 1183 to 1185, 1188, Pol. C. 1895; Sec. 1, Ch. 44, L. 1941; Secs. 1 to 4, Ch. 28, L. 1945; Sec. 1, Ch. 92, L. 1949; Sec.

1, Ch. 64, L. 1959), relating to the requirement for elections by ballot, qualifications of electors, privileges of electors, and the definition of "taxpayers," were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 4

ELECTION PRECINCTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-401 to 23-407. (545 to 551) Repealed.

Repeal

Sections 23-401 to 23-407 (Secs. 1243, 1244, Pol. C. 1895; Secs. 2 to 6, Ch. 113, L. 1911; Secs. 2 to 6, Ch. 74, L. 1913; Secs. 2 to 6, Ch. 122, L. 1915; Sec. 1, Ch.

25, L. 1929), relating to election precincts, ward boundaries, and designation of places for holding elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 5

REGISTRATION OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-501, 23-501.1, 23-502 to 23-534. (553 to 562, 566 to 586) Repealed.**Repeal**

Sections 23-501, 23-501.1, 23-502 to 23-534 (Secs. 1, 7, 12, 17 to 24, 26, 29, 30, 32, 35 to 39, Ch. 113, L. 1911; Secs. 1, 7, 12, 15, 17 to 24, 26, 29, 30, 32, 35 to 40, Ch. 74, L. 1913; Secs. 1, 7 to 36, Ch. 122, L. 1915; Sec. 1, Ch. 38, L. 1917; Sec. 1, Ch. 29, L. 1919; Sec. 1, Ch. 58, L. 1919; Secs. 1 to 4, Ch. 97, L. 1919; Sec. 1, Ch. 235, L. 1921; Secs. 1, 2, Ch. 61, L. 1933; Sec. 1, Ch. 25, L. 1935; Sec. 1, Ch.

71, L. 1935; Sec. 1, Ch. 147, L. 1937; Secs. 1 to 6, Ch. 172, L. 1937; Sec. 1, Ch. 51, L. 1941; Sec. 1, Ch. 144, L. 1941; Secs. 1, 2, Ch. 177, L. 1943; Sec. 1, Ch. 167, L. 1945; Sec. 1, Ch. 83, L. 1953; Secs. 1, 2, Ch. 80, L. 1955; Secs. 1, 2, Ch. 18, L. 1959; Secs. 2 to 4, Ch. 64, L. 1959; Secs. 1 to 5, Ch. 98, L. 1965; Secs. 3, 4, Ch. 156, L. 1965; Secs. 1, 2, Ch. 139, L. 1967), relating to registration of electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 6

JUDGES AND CLERKS OF ELECTIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612. (587 to 597) Repealed.**Repeal**

Sections 23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612 (Secs. 6, 7, p. 461, Cod. Stat. 1871; Secs. 1173, 1260 to 1269, Pol. C. 1895; Sec. 1, Ch. 101, L. 1917; Secs. 1, 2, Ch. 43, L. 1923; Sec. 1, Ch. 61, L. 1937; Sec. 1, Ch. 85, L. 1941; Secs. 1, 2, Ch. 40, L. 1943; Sec. 1, Ch.

49, L. 1945; Sec. 2, Ch. 167, L. 1945; Sec. 1, Ch. 117, L. 1947; Sec. 1, Ch. 12, L. 1951; Sec. 1, Ch. 14, L. 1957; Sec. 1, Ch. 210, L. 1957; Secs. 1, 2, Ch. 99, L. 1961; Sec. 1, Ch. 46, L. 1963), relating to judges and clerks of elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 7

ELECTION SUPPLIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-701 to 23-713. (598, 600 to 611) Repealed.**Repeal**

Sections 23-701 to 23-713 (Sec. 18, p. 463, Cod. Stat. 1871; Sec. 20, p. 140, L. 1889; Secs. 1174, 1270 to 1273, 1300, 1302, 1303, 1356, Pol. C. 1895; Sec. 1, Ch. 88, L. 1907; Secs. 1 to 4, Ch. 12, L. 1915;

Sec. 5, Ch. 64, L. 1959), relating to poll-books, ballots, ballot boxes, printed instructions to electors, return forms, and other election supplies, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 8

NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETINGS OR BY ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-801 to 23-820. (612 to 618.1, 619 to 630) Repealed.**Repeal**

Sections 23-801 to 23-820 (Secs. 1310 to 1317, 1319, 1320, 1322, 1330 to 1336,

Pol. C. 1895; Secs. 2 to 9, 11, 12, 19, pp. 135 to 138, 140, L. 1889; Secs. 1 to 3, pp. 115, 116, L. 1901; Sec. 1, Ch. 15, L. 1925; Sec. 1,

Ch. 58, L. 1925; Sec. 1, Ch. 64, L. 1925; Sec. 1, Ch. 28, L. 1933; Sec. 1, Ch. 104, L. 1943; Sec. 1, Ch. 105, L. 1943; Sec. 1, Ch. 26, L. 1945; Sec. 1, Ch. 259, L. 1947; Sec. 1, Ch. 160, L. 1949; Secs. 5, 6, Ch.

156, L. 1965; Sec. 1, Ch. 86, L. 1967; Sec. 3, Ch. 194, L. 1967), relating to nominations for special elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 9

PARTY NOMINATIONS BY DIRECT VOTE—THE DIRECT PRIMARY

(Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

23-901 to 23-936. (631 to 641, 644 to 652, 654 to 663, 665 to 670) **Repealed.**

Repeal

Sections 23-901 to 23-936 (Secs. 1 to 10, 13 to 21, 23 to 29, 31 to 38, Initiative Measure Nov. 1912; Secs. 1, 3, Ch. 88, L. 1921; Sec. 1, Ch. 1, Ex. L. 1921; Secs. 1, 2, Ch. 133, L. 1923; Secs. 1, 2, Ch. 12, L. 1925; Sec. 1, Ch. 118, L. 1925; Sec. 1, Ch. 159, L. 1925; Sec. 1, Ch. 3, L. 1927; Sec. 1, Ch. 7, L. 1927; Sec. 1, Ch. 14, L. 1927; Sec. 1, Ch. 98, L. 1927; Sec. 1, Ch. 125, L. 1927; Sec. 1, Ch. 34, L. 1929; Sec. 1, Ch. 67, L. 1929; Sec. 1, Ch. 6, L. 1933; Sec. 1, Ch. 62, L. 1933; Sec. 1, Ch. 181, L. 1937; Sec. 1, Ch. 84, L. 1939;

Sec. 1, Ch. 27, L. 1945; Sec. 1, Ch. 34, L. 1945; Sec. 3, Ch. 167, L. 1945; Sec. 1, Ch. 75, L. 1949; Sec. 1, Ch. 64, L. 1951; Secs. 1, 2, Ch. 6, L. 1953; Sec. 1, Ch. 8, L. 1953; Sec. 12, Ch. 214, L. 1953; Sec. 1, Ch. 19, L. 1955; Sec. 2, Ch. 207, L. 1955; Secs. 1 to 3, Ch. 266, L. 1955; Sec. 6, Ch. 64, L. 1959; Sec. 1, Ch. 219, L. 1959; Secs. 1, 2, Ch. 274, L. 1959; Sec. 1, Ch. 38, L. 1961; Secs. 2, 7, Ch. 156, L. 1965; Sec. 1, Ch. 151, L. 1967; Secs. 4, 5, Ch. 194, L. 1967), relating to primary elections, were repealed by Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 10

POLITICAL PARTIES

(Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

23-1001 to 23-1009. (673.1 to 673.8) **Repealed.**

Repeal

Sections 23-1001 to 23-1009 (Secs. 1 to 8, Ch. 126, L. 1927; Sec. 2, Ch. 64, L. 1951; Sec. 1, Ch. 55, L. 1953; Secs. 13 to 16, Ch. 214, L. 1953; Secs. 4 to 7, Ch.

266, L. 1955; Sec. 3, Ch. 274, L. 1959; Secs. 1, 8, Ch. 156, L. 1965), relating to political parties, were repealed by Sec. 8, Ch. 266, Laws 1955; Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 11

BALLOTS, PREPARATION AND FORM

(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

23-1101 to 23-1117. (677 to 681, 683 to 687) **Repealed.**

Repeal

Sections 23-1101 to 23-1107 (Secs. 1, 17, pp. 135, 139, L. 1889; Secs. 1350 to 1355, Pol. C. 1895; Sec. 1354, p. 117, L. 1901; Secs. 2, 3, Ch. 88, L. 1907; Sec. 1, Ch. 16, L. 1925; Sec. 1, Ch. 203, L. 1937; Sec. 1, 2, Subds. A to F, Ch. 81, L. 1939; Sec. 1, Ch. 170, L. 1939; Sec. 1, Subds. A to

F, Ch. 141, L. 1947; Sec. 1, Subds. A to F, Ch. 79, L. 1949; Secs. 1 to 3, Ch. 72, L. 1953; Sec. 9, Ch. 156, L. 1965; Secs. 6, 7, Ch. 194, L. 1967), relating to form, printing and distribution of ballots, were repealed by Sec. 13, Ch. 194, Laws 1967; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 12

CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1201 to 23-1228. (688 to 714) Repealed.**Repeal**

Sections 23-1201 to 23-1228 (Sec. 11, p. 462, Cod. Stat. 1871; Secs. 22 to 27, pp. 141, 142, L. 1889; Secs. 1290 to 1292, 1358, 1360 to 1379, Pol. C. 1895; Secs. 1357 to 1359, 1361, 1364, pp. 118 to 120, L. 1901; Secs. 4, 5, Ch. 88, L. 1907; Sec. 26, Ch. 113, L. 1911; Sec. 26, Ch. 74, L. 1913; Sec. 26, Ch. 122, L. 1915; Sec. 1, Ch. 3, L. 1935; Sec. 1, Ch. 2, L. 1937;

Sec. 1, Ch. 111, L. 1937; Sec. 1, Ch. 207, L. 1955; Sec. 1, Ch. 32, L. 1959; Secs. 7, 8, Ch. 64, L. 1959; Sec. 1, Ch. 77, L. 1961), relating to voting time allowance, time of and proclamations on opening and closing of polls, furnishing and arrangement of polling places, methods and manner of voting, and challenges, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 13

VOTING BY ABSENT ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321. (715 to 735) Repealed.**Repeal**

Sections 23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321 (Secs. 1 to 20, Ch. 110, L. 1915; Secs. 1 to 21, Ch. 155, L. 1917; Secs. 1 to 3, Ch. 151, L. 1923; Sec. 1, Ch. 32, L. 1941; Secs. 1 to 17, Ch. 234, L. 1943; Sec. 1, Ch. 60, L. 1953; Secs. 1, 2, Ch. 104, L. 1953; Sec. 1, Ch. 152, L.

1955; Secs. 3 to 5, Ch. 18, L. 1959; Secs. 9 to 11, Ch. 64, L. 1959; Secs. 1 to 3, Ch. 216, L. 1959; Secs. 1 to 3, Ch. 108, L. 1963; Secs. 1, 2, Ch. 124, L. 1963), relating to voting by absent or physically incapacitated electors were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 14

VOTING BY ABSENT ELECTORS IN UNITED STATES SERVICE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1401 to 23-1406. Repealed.**Repeal**

Sections 23-1401 to 23-1406 (Secs. 1 to 6, Ch. 99, L. 1943; Secs. 6 to 10, Ch.

18, L. 1959), relating to voting by absent electors in United States service, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 15

REGISTRATION OF ELECTORS ABSENT FROM
COUNTY OF THEIR RESIDENCE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1501 to 23-1503. Repealed.**Repeal**

Sections 23-1501 to 23-1503 (Secs. 1 to 3, Ch. 190, L. 1943), relating to registra-

tion of electors absent from county of residence, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 16

VOTING MACHINES—CONDUCT OF ELECTION WHEN USED

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618. (757 to 773) Repealed.**Repeal**

Sections 23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618 (Secs. 1 to 17, Ch. 168, L. 1907; Sec. 1, Ch. 6, L. 1909; Secs. 1 to 3, Ch. 99, L. 1909; Secs. 1 to 4, Ch. 246, L. 1921; Sec. 1, Ch. 31, L. 1935; Secs. 1 to 4, Ch. 19, L. 1943; Sec. 1, Ch. 26, L.

1947; Secs. 1, 2, Ch. 20, L. 1959; Sec. 16, Ch. 42, L. 1963; Sec. 1, Ch. 57, L. 1963; Sec. 10, Ch. 156, L. 1965), relating to examinations and specifications of voting readiness and the conduct of election when used, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 17

ELECTION RETURNS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1701 to 23-1715. (774 to 782, 784 to 789) Repealed.**Repeal**

Sections 23-1701 to 23-1715 (Secs. 22 to 25, p. 380, Bannaack Stat.; Sec. 30, p. 143, L. 1889; Secs. 1400 to 1408, 1410 to 1415, Pol. C. 1895; Secs. 6 to 10, Ch. 88, L. 1907; Sec. 1, Ch. 112, L. 1937; Sec. 1, Ch. 65, L. 1943; Secs. 1 to 3, Ch. 23,

L. 1945; Secs. 12 to 16, Ch. 64, L. 1959; Sec. 17, Ch. 42, L. 1963), relating to canvass of votes by judges of elections and the disposition and custody of returns were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 18

CANVASS OF ELECTION RETURNS—RESULTS AND CERTIFICATES

(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

23-1801 to 23-1819. (790 to 808) Repealed.**Repeal**

Sections 23-1801 to 23-1819 (Secs. 2 to 15, 17, 18, pp. 299 to 305, L. 1891; Secs. 1170, 1430 to 1444, 1448 to 1450, Pol. C. 1895; Sec. 1, Ch. 84, L. 1909; Sec. 1, Ch. 55, L. 1949; Sec. 1, Ch. 50, L. 1959; Sec. 1, Ch. 87, L. 1959; Sec. 16, Ch. 97, L. 1961; Sec. 18, Ch. 42, L. 1963;

Secs. 8, 9, Ch. 194, L. 1967), relating to the county and state canvass of returns, the issuance of certificates and commissions, and the duty of the secretary of state to print the election laws, were repealed by Sec. 13, Ch. 194, Laws 1967; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 19

FAILURE OF ELECTIONS—PROCEEDINGS ON TIE VOTE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1901 to 23-1904. (809 to 812) Repealed.**Repeal**

Sections 23-1901 to 23-1904 (Sec. 16, p. 305, L. 1891; Secs. 1171, 1445 to 1447, Pol. C. 1895; Sec. 10, Ch. 194, L. 1967),

relating to tie votes for representatives in Congress, state officers, and judicial officers, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 20

NONPARTISAN NOMINATION AND ELECTION OF JUDGES OF
SUPREME COURT AND DISTRICT COURTS(Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368,
Laws of 1969)**23-2001 to 23-2014. (812.1 to 812.11, 812.13 to 812.15) Repealed.****Repeal**

Sections 23-2001 to 23-2014 (Secs. 1 to 11, 13 to 15, Ch. 182, L. 1935; Secs. 2 to 4, Ch. 229, L. 1961), relating to nonpar-

tisan nomination and election of district court and supreme court judges, were repealed by Sec. 3, Ch. 20, Laws 1959; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 21

PRESIDENTIAL ELECTORS, HOW CHOSEN—DUTIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2101 to 23-2111. (813 to 823) Repealed.**Repeal**

Sections 23-2101 to 23-2111 (Secs. 1 to 5, 7, pp. 173, 174, L. 1891; Secs. 1460 to 1470, Pol. C. 1895; Sec. 1, Ch. 4, L.

1933; Sec. 1, Ch. 15, L. 1933; Sec. 1, Ch. 33, L. 1935), relating to election and duties of presidential electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 22

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2201 to 23-2206. (824 to 828) Repealed.**Repeal**

Sections 23-2201 to 23-2206 (Secs. 2, 3, p. 306, L. 1891; Secs. 1480, 1481, 1490 to 1492, Pol. C. 1895; Secs. 1, 2, Ch. 126,

L. 1915; Sec. 1, Ch. 146, L. 1965), relating to elections and vacancies in office of members of Congress, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 23

RECOUNT OF BALLOTS—RESULTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2301 to 23-2323. (828.1 to 828.7, 829) Repealed.**Repeal**

Sections 23-2301 to 23-2323 (Secs. 1 to 7, Ch. 27, L. 1935; Secs. 1 to 15, Ch.

42, L. 1963), relating to recounts of ballots, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 24

CONVENTIONS TO RATIFY PROPOSED AMENDMENTS TO
CONSTITUTION OF THE UNITED STATES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2401 to 23-2411. (829.1 to 829.11) Repealed.**Repeal**

Sections 23-2401 to 23-2411 (Secs. 1 to 11, Ch. 188, L. 1933; Secs. 11, 12, Ch. 194, L. 1967), relating to conventions for ra-

tification of proposed amendments to the constitution of the United States, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 25

ELECTRONIC VOTING SYSTEMS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2501 to 23-2507. Repealed.**Repeal**

Sections 23-2501 to 23-2507 (Secs. 1, 2, 4 to 8, Ch. 20, L. 1965; Secs. 1, 2, Ch.

220, L. 1967) relating to the use of electronic voting systems, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 26

DEFINITIONS AND GENERAL PROVISIONS

Section23-2601. **Definitions.**

23-2602. Elections to be by ballot.

23-2603. Determination of candidate elected.

23-2604. General election, when to be held.

23-2605. Time of opening and closing of polls.

23-2606. Penalty for violation of act.

23-2601. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "Election" means a general, special, primary nominating, municipal election, or an election in a school district.

(2) "General election" means an election held for the election of officers throughout the state at times specified by law.

(3) "Special election" means an election called by the proper authorities to fill vacancies or to raise money.

(4) "Vacancy" means an office which does not have an incumbent who has a right to exercise its functions and take its fees or emoluments.

(5) "Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls.

(6) "Party" means any political organization which at the last preceding election for governor polled at least three per cent (3%) of the votes for governor.

(7) "Taxpayer" means a person who has paid a tax on property assessed on a county or city assessment roll next preceding the election at which a question is to be submitted to the vote of the taxpayers.

(8) "Registrar" means the county clerk and recorder and any regularly appointed deputy clerk and recorder.

(9) "Commissioners" means the board of county commissioners.

(10) "City" means any incorporated city or town.

(11) "Council" means any municipal council or commission.

History: En. Sec. 1, Ch. 368, L. 1969.**Title of Act****Compiler's Note**

Chapter 368, Laws 1969 provided: "It is the intent of the legislative assembly that all nonamendatory sections of this bill be codified in Title 23, Revised Codes of Montana, 1947."

An act for the codification and general revision of the laws relating to the election laws of the state of Montana; repealing sections 23-101 through 23-106, 23-201 through 23-202, 23-301 through 23-311, 23-401 through 23-407, 23-501, 23-501.1, 23-502 through 23-534, 23-601 through

23-604, 23-604.1, 23-604.2, 23-605 through 23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through 23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-

1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 2206, 23-2301 through 23-2323, 23-2401 through 23-2411, 23-2501 through 23-2507, R. C. M. 1947.

Cross-References

Election offenses and corrupt practices, sec. 94-1401 et seq.

DECISIONS UNDER FORMER LAW

"General Election"

A general election is one held for the election of officers throughout the state. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

"Special Election"

A special election is one held to supply a vacancy in a public office, or one in which is submitted to the electors a proposition to raise money for any public improvement. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

"Vacancy"

The word vacancy as applied to a public office has no technical meaning, and it is not to be taken in a strict technical sense in every case. It may be said that an office is vacant when it is empty and without an incumbent who has a right to exercise its functions and take its fees or emoluments even though the vacancy is not a corporal one. "An office without an incumbent is vacant." LaBorde v. McGrath 116 M 283, 292, 149 P 2d 913.

23-2602. Elections to be by ballot. All elections shall be by ballot.

History: En. Sec. 2, Ch. 368, L. 1969.

23-2603. Determination of candidate elected. The person receiving the highest number of votes for any office at an election is elected to that office.

History: En. Sec. 3, Ch. 368, L. 1969.

23-2604. General election, when to be held. A general biennial election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November.

History: En. Sec. 4, Ch. 368, L. 1969.

Cross-References

Cities and towns, elections of officers, secs. 11-701 to 11-734.

Corrupt Practices Act, secs. 94-1427 to 94-1474.

Election law violations, sec. 94-1401 et seq.

Initiative and referendum, sec. 37-101 et seq.

23-2605. Time of opening and closing of polls. (1) Except as provided in subsection (2) of this section:

(a) The polls must be opened at 8 a. m. on the morning of election day, and must be kept open continuously until 8 p. m. of that day;

(b) In precincts having less than one hundred (100) registered electors, the polls must be opened at 1 p. m. and closed at 8 p. m. of that day;

(c) Whenever all registered electors in any precinct have voted, the polls shall be closed immediately.

(2) If a special election is held by a county, city, high school district, or school district on the question of incurring an indebtedness or making a special or additional levy for any purpose, the polls shall open at 12 noon and be kept open continuously until 8 p. m. However, the poll hours shall be as specified in subsection (1) of this section if the

election is held on the same day, at the same polling places, and with the same judges and clerks as a general, county, school, or city election.

History: En. Sec. 5, Ch. 368, L. 1969.

Cross-References

Airport bonds, sec. 1-804.

Beer, local option elections, sec. 4-350 et seq.

Cities and towns, bond elections, secs. 11-2301 to 11-2330.

County bonds and warrants, secs. 16-2001 to 16-2050.

Local option elections, state Liquor Control Act, sec. 4-142 et seq.

Retail liquor licenses, local option election, secs. 4-431 to 4-437.

School bond elections, secs. 75-7110 to 75-7117.

School elections, secs. 75-6401 to 75-6423.

23-2606. Penalty for violation of act. Anyone who violates any provision of this act for which no other penalty is specified is guilty of a misdemeanor.

History: En. Sec. 247, Ch. 368, L. 1969.

Cross-References

Bribery at elections, penalty, sec. 94-1423.

Disclosing contents of ballot after marking, penalty, sec. 94-1414.

Electioneering by election officials, penalty, 94-1413.

False nomination certificate, penalty, sec. 94-1412.

CHAPTER 27

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

Section

23-2701. Qualifications of voter.

23-2701.1. Legislative policy and purpose.

23-2704. Notice and closing of registration for elections on incurring of state indebtedness other than for refunding or levy of tax.

23-2705. Privilege from arrest.

23-2701. Qualifications of voter. (1) No person may be entitled to vote at general and special elections for officers which are elective, and upon questions submitted to the vote of the people unless he has the following qualifications:

(a) He must be registered as required by law;

(b) He must be of the minimum age for voting prescribed by the constitution of the state of Montana, except that to vote for president and vice-president of the United States, or for United States senator or representative, he must be eighteen (18) years of age;

(c) He has met the residence requirements for voting provided in the constitution of the state of Montana and has resided in the county thirty (30) days immediately preceding the election at which he offers to vote, except that if he has resided in the state for thirty (30) days immediately preceding the election at which he offers to vote, he shall be allowed to vote for president and vice-president of the United States;

(d) He must be a citizen of the United States.

(2) No person convicted of a felony has the right to vote unless he has been pardoned.

(3) No person adjudicated insane has the right to vote unless he has been restored to capacity as provided by law.

History: En. Sec. 6, Ch. 368, L. 1969; amd. Sec. 1, Ch. 120, L. 1971; amd. Sec. 2, Ch. 158, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 120 and once by Ch. 158.

Neither amendatory act mentioned nor incorporated all of the changes made by the other. Since the changes made by the two amendments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

Chapter 120, Laws of 1971 deleted "Except as provided in section 23-2702" at the beginning of subsection (1); substituted a new subdivision (1)(a), now subdivision (1)(b), for a subdivision (1)(a) reading "He must be twenty-one (21) years of age;" and substituted a new subdivision (1)(b), now subdivision (1)(c), for a subdivision (1)(b) reading "He must have resided in the state one (1) year and in the county thirty (30) days immediately preceding the election at which he offers to vote."

Chapter 158, Laws of 1971, rewrote the preliminary paragraph in subsection (1), which formerly read: "Except as provided in section 23-2702, every person, if registered as required by law, is entitled to vote at all general and special elections for all officers which are elective, and upon all questions submitted to the vote of the people if he has the following qualifications:"; inserted a new subdivision (1)(a); substituted a new subdivision (1)(b) reading "He must be of the minimum age for voting provided by the constitution of the State of Montana" for a former subdivision (1)(a) reading "He must be twenty-one (21) years of age;" and redesignated former subdivisions (b) and (c) of subsection (1) as subdivisions (c) and (d) respectively.

Effective Date

Section 3 of Ch. 120, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

Racial Discrimination Prohibited

Congress is empowered, as it did in the

Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa, to prohibit use of literacy tests or other devices used to discriminate against voters on account of their race in all state and national elections. *United States v. Arizona*, — US —, — L Ed 2d —, 91 S Ct. 260.

Residence Requirements

As it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa-1, Congress can prohibit states from disqualifying voters in elections for presidential and vice-presidential electors because they have not met state residency requirements, and can set residency requirements and provide for absentee balloting in presidential and vice-presidential elections. *United States v. Arizona*, — US —, — L Ed 2d —, 91 S Ct 260.

Voting Age

Provisions of the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973bb-1, setting minimum voting age at 18 are constitutional and enforceable in so far as they pertain to federal elections but are unconstitutional and unenforceable in so far as they pertain to state and local elections. *United States v. Arizona*, — US —, — L Ed 2d —, 91 S Ct 260.

Voting for Deceased Candidate

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under section 2, article IX of the constitution, a voter may cast his ballot. *State ex rel. Wolff v. Guerink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-2701.1. Legislative policy and purpose. Section 2 of article IX of the Montana constitution provides that in order to entitle a person to vote upon a question which may be submitted to a vote of the people or electors, if the question concerns the creation of any levy, debt or liability, he must, in addition to possessing other qualifications, be a taxpayer whose name appears on the last preceding completed assessment roll. Recent decisions of the supreme court of the United States hold that similar provisions in the constitutions and statutes of other states are in conflict with the equal protection clause of the fourteenth amendment to the constitution of the United States. The ability of the state and of its counties, cities, towns and school districts and other political subdivisions to provide funds needed for essential governmental

purposes depends in substantial part upon their ability to create valid debts and liabilities and, when the same are required by law or the constitution to be submitted to a vote of the people or electors, to record and canvass such vote in such manner as to determine finally and conclusively whether or not the debt or liability has been approved by the required majority vote of the electors qualified and offering to vote thereon. It is therefore the policy and purpose of this law to eliminate all statutory electors' qualifications for voting on the creation of any public debt or liability except such qualifications as are validly by or pursuant to the Montana constitution; to provide an adequate procedure for hearing and determination of any issue raised with reference to such qualifications; and to limit to a reasonable time the period within which such issues may be raised.

History: En. Sec. 1, Ch. 158, L. 1971.

Title of Act

An act relating to elections upon questions which concern or may concern the creation of a public debt or liability and the qualifications of persons petitioning for and voting at such elections: amending sections 1-804, 23-2701, 23-2702, 23-2703, 23-3012, 23-4201, 11-2217, 11-2271, 11-2275, 11-2306, 11-2310, 11-2404, 11-3906,

16-2021, 16-2022, 16-2026 and 93-2612, R.C.M. 1947; prescribing a period of limitation upon actions and defenses raising an issue as to such qualifications; and providing an effective date.

Repealing Clause

Section 2 of Ch. 120, Laws 1971 read "Sections 23-2702 and 23-2703, R.C.M. 1947, are hereby repealed."

23-2702, 23-2703. Repealed.

Repeal

Sections 23-2702 and 23-2703 (Secs. 7, 8, Ch. 368, L. 1969), relating to qualifications of electors at elections on incurring state indebtedness, were repealed by Sec. 2, Ch. 120, Laws 1971.

Compiler's Notes

Sections 3 and 4, Ch. 158, Laws of 1971, purported to amend these sections. However, the purported amendments are void under the provisions of section 43-515.

23-2704. Notice and closing of registration for elections on incurring of state indebtedness other than for refunding or levy of tax. (1) If the question of state indebtedness, issuance of bonds or debentures other than for refunding, or the levy of a tax for state purposes, is submitted at an election other than a general biennial election, the registrar of each county shall publish in the official county newspaper, a notice signed by him, stating that registration will close at noon on the fortieth (40th) day prior to the date of the election unless the act providing for the submission of the question fixes a different time for the giving of notice. The notice shall be published ten (10) days or more prior to the date when registration will be closed unless the act providing for submission of the question fixes a different time for closing registration.

(2) If the question is to be submitted at a general biennial election, notice and the closing of registration shall be governed by the laws applying to general biennial elections. The provisions of section 37-107, R. C. M. 1947 apply to the printing and distribution of copies of the proposed law.

History: En. Sec. 9, Ch. 368, L. 1969.

Objection Waived

The objection that a measure creates a state debt, levy, or liability, and that

therefore it should have been placed upon a separate ballot, is waived if not raised before the election. *State ex rel. Graham v. Board of Examiners*, 125 M 419, 239 P 2d 283, 290.

23-2705. Privilege from arrest. Electors are privileged from arrest during their attendance at elections and in going to and from voting places except in cases of treason, felony, or breach of the peace.

History: En. Sec. 10, Ch. 368, L. 1969.

Cross-Reference

Persons exempt from arrest, sec. 95-616.

CHAPTER 28

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

Section

23-2801. Advertisement of questions to be submitted.

23-2802. Publication and printing of amendments to constitution.

23-2801. Advertisement of questions to be submitted. Questions to be submitted to the people of the county or city must be advertised by publication in at least one (1) newspaper within the county or city once a week for two (2) successive weeks. One (1) of the publications must be upon the last day the newspaper is issued before the election.

History: En. Sec. 11, Ch. 368, L. 1969.

23-2802. Publication and printing of amendments to constitution. If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall:

(1) Have the proposed amendment or amendments published in full once a week in one (1) newspaper in each county (if such there be) for four (4) weeks prior to the next general biennial election;

(2) Have a pamphlet printed containing an exact copy of the proposed amendment or amendments, an exact copy of existing constitutional provisions to be revised, and the amendment or amendments in the form in which it or they will be printed on the official ballot. The printed pamphlets shall be distributed as provided in section 37-107, R. C. M. 1947.

History: En. Sec. 12, Ch. 368, L. 1969.

and constitutional measures to be prepared by attorney general, sec. 37-104.1.

Cross-Reference

Explanation of initiative, referendum

DECISIONS UNDER FORMER LAW

Referendums

Legislature, by repealing section 537, R. C. M. 1935 and leaving in effect section requiring publication of proposed constitutional amendments, indicated its intent to dispense with publication prior

to general election of legislative acts referred to the people by the legislature, or the governor's proclamation that such act would be voted upon at such election. Nordquist v. Ford, 112 M 278, 283, 114 P 2d 1071.

CHAPTER 29

PROCLAMATIONS AND PUBLICATIONS

Section

23-2901. Election proclamation by the governor—contents.

23-2902. Publication and posting by county commissioners.

23-2903. Election proclamation by county commissioners.

23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts.

23-2901. Election proclamation by the governor—contents. Sixty (60) days or more before a general election, the governor shall issue an election proclamation and transmit a copy to each board of county commissioners. The proclamation shall contain:

- (1) A statement of the time of the election and the offices to be filled;
- (2) An offer of rewards stating: "There is a reward of one hundred dollars (\$100) for the arrest and conviction of any person violating any of the provisions of sections 94-1401 through 94-1424, R. C. M. 1947. Rewards will be paid until the total amount expended reaches the sum of five thousand dollars (\$5,000).

History: En. Sec. 13, Ch. 368, L. 1969.

Office Not Mentioned

The governor issued his proclamation giving notice of a general election and omitted therefrom the mention of an election of three judges for the second judicial district, and called for the election of two judges. Upon mandamus proceedings against the governor, the relator claimed that three judges should have been mentioned in the proclamation, and that he was elected and entitled to receive from the governor a commission as judge. As it failed to appear that the electors voted for more than two candidates for judge-ships, the petition was dismissed. State ex rel. Breen v. Toole, 32 M 4, 8, 79 P 403.

Sufficiency of Notice

A statement in the proclamation of the

governor giving notice of a general election, that among other officers there was to be elected "also a district judge, in any judicial district where a vacancy may exist," was not such a notice of the necessity of filling a vacancy by election. State ex rel. Patterson v. Lentz, 50 M 322, 343, 146 P 932.

The governor's proclamation should state the offices to be filled, especially where a state office, such as a judgeship, held by his appointee, is to be filled; but, if the people have actual notice that a judge is to be elected and indicate their choice, no insufficiency of notice, in the governor's proclamation, of a vacancy in that office, in any particular district, or other informality in the election, will suffice to defeat their will, as expressed by their votes. State ex rel. Patterson v. Lentz, 50 M 322, 343, 146 P 932.

23-2902. Publication and posting by county commissioners. When a proclamation prescribed by section 23-2901 is received, the commissioners shall have a copy published in a newspaper published in the county if a newspaper is published therein, otherwise in a newspaper of general circulation therein, and shall post a copy ten (10) days or more before the election at each polling place.

History: En. Sec. 14, Ch. 368, L. 1969.

23-2903. Election proclamation by county commissioners. When a special election is ordered by the commissioners, they must issue an election proclamation containing the statement contained in section 23-2901 (1). The statement must be published and posted in the same manner as a proclamation issued by the governor.

History: En. Sec. 15, Ch. 368, L. 1969.

Notice Not Proclamation

The notice of election does not take the place of the election proclamation. Evers v. Hudson, 36 M 135, 154, 92 P 462.

Public Improvements

Prior section had no reference to elections held for raising money for public improvements. The power conferred in this behalf is exercised under special provisions

on the subject, found in that part of the codes relating to county government. State ex rel. Rowe v. Kehoe, 49 M 582, 592, 144 P 162.

Vacancies

In case of vacancies in county offices, boards of county commissioners have the power, and it is their duty, to call and provide for the holding of special elections to fill them. State ex rel. Rowe v. Kehoe, 49 M 582, 592, 144 P 162.

23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts. The secretary of state shall publish copies of the election laws and laws which relate to elections. He shall transmit sufficient copies to each registrar. The registrar shall furnish each election precinct in his county with two (2) copies.

History: En. Sec. 16, Ch. 368, L. 1969.

CHAPTER 30

REGISTRATION OF ELECTORS

Section

- 23-3001. Highway patrol to submit new-voter lists to major political parties.
- 23-3002. County clerk as county registrar.
- 23-3003. Notaries public as deputy registrars—appointment of additional deputies—qualifications—duties.
- 23-3004. Registry book and card index.
- 23-3004.1. Resident school district included in registration.
- 23-3005. Hours of registration—registration cards.
- 23-3006. Method of registering—absent electors in the United States service—felony provisions.
- 23-3007. Registration of infirm elector at his residence.
- 23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary.
- 23-3009. Transferring registration to another precinct.
- 23-3010. Procedure for transferring registry.
- 23-3011. Inquiry as to previous registration—procedure.
- 23-3012. Lists of registered electors—precinct register—indication of taxpayer electors.
- 23-3013. Cancellation of registry for failure to vote—reregistration—cancellation of registry of elector in United States service.
- 23-3014. Cancellation of registry for other reasons—reregistration.
- 23-3015. Challenges prior to election—registrar's duties—challenges on election day—election judges' duties.
- 23-3016. Close of registration—procedure.
- 23-3017. Registration while registry closed preceding election.
- 23-3018. Name on precinct register prima facie evidence of right to vote—elector's identity—election judges' duties as to precinct register.
- 23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register.
- 23-3020. Erroneous omission of name from precinct register—Certificate.
- 23-3021. Registration by naturalized citizen.
- 23-3022. Residence, rules for determining.
- 23-3023. Printing of list of electors shown on precinct registers.
- 23-3024. Preparation of precinct register.
- 23-3025. Attempting to vote at another polling place after vote has been rejected a misdemeanor.
- 23-3026. Commissioners to provide registrar with sufficient help.
- 23-3027. Charges to city or school district—warrant—when no precinct registers required.
- 23-3028. Copies of precinct registers available to any person upon written request—charge.
- 23-3029. Violations of act, penalty for.

23-3001. Highway patrol to submit new-voter lists to major political parties. No later than January 31 in any year in which a general election is held, the Montana highway patrol shall submit to the chairman of each major political party of the state, a list prepared from its driver license registration files, showing names and addresses of all persons, compiled on a county by county basis, who have reached voting age since the last general election and those who will reach voting age before the date of the

general election. No official of the Montana highway patrol shall be responsible for any honest error or omission in preparing the lists.

History: En. Sec. 17, Ch. 368, L. 1969; piled on a county by county basis" in the first sentence; and made a minor change in phraseology.

Amendments

The 1971 amendment inserted "com-

23-3002. County clerk as county registrar. (1) Each county clerk and recorder is ex officio county registrar. He shall:

(a) Serve without extra pay or compensation;

(b) Have custody of registration books, cards, and other records provided for by this act.

(2) The official register of electors is an official record of the county clerk and recorder.

History: En. Sec. 21, Ch. 368, L. 1969.

23-3003. Notaries public as deputy registrars—appointment of additional deputies—qualifications—duties. (1) All notaries public are deputy registrars in the county in which they reside. They may register electors residing in any precinct within the county.

(2) The commissioners shall appoint two (2) deputy registrars who are not notaries public, one (1) from each of the two (2) major political parties, for each precinct in the county from lists of persons recommended by the political parties. If the parties fail to submit lists, the commissioners shall appoint deputy registrars without recommendations from the parties. A deputy registrar shall:

(a) Be a qualified taxpaying resident elector in the precinct for which he is appointed;

(b) Register electors residing in any precinct in the county.

(3) Not less than three (3) days after a registration card is filled out, deputy registrars shall forward the card to the registrar.

History: En. Sec. 22, Ch. 368, L. 1969.

23-3004. Registry book and card index. The registrars shall keep an official register in a manner which each registrar deems the most efficient. A card index shall be kept by the registrar and shall at all times be in the custody of the registrar. The form and information recorded in the registry book and on the registry cards shall be designated by the secretary of state.

History: En. Sec. 23, Ch. 368, L. 1969.

23-3004.1. Resident school district included in registration. In the discretion prescribed by section 23-3004, R.C.M. 1947, the county registrar shall record the resident school district of each person registering to vote to allow the preparation of registered elector lists for each school district of the county.

History: En. Sec. 1, Ch. 243, L. 1971.

Title of Act

An act to require recording of the

school district of residence when registering electors; and amending sections 23-3023 and 23-3027, R.C.M. 1947, providing for precinct registers.

23-3005. Hours of registration — registration cards. (1) The registrar's office shall be open for voter registration from 8 a. m. until 5 p. m. on all regular working days except legal holidays as defined by section 19-107, R. C. M. 1947, except that the registrar's office shall be kept open on election day during the hours when the polls are open.

(2) Registration cards shall be numbered consecutively in order of receipt.

(3) The registrar shall classify registration cards by precinct and arrange the cards for each precinct in alphabetical order.

(4) The cards for each precinct shall be kept in a separate file.

(5) Immediately after filling out a registration card, the registrar shall enter the information in the official register of the county in the proper precinct.

History: En. Sec. 24, Ch. 368, L. 1969.

23-3006. Method of registering—absent electors in the United States service—felony provisions. (1) An elector may register by appearing before the registrar or deputy registrar in the county in which he resides and by:

(a) Answering any questions asked by the registrar concerning items of information called for by registry cards;

(b) Signing and verifying or affirming the affidavit or affidavits on the back of the card.

(2) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by:

(a) Mailing the registry card filled out and signed under oath to the registrar, or

(b) Mailing the federal post card application filled out and signed under oath to the registrar.

(3) A person is guilty of a felony and upon conviction shall be imprisoned in the state prison for not less than one (1) nor more than three (3) years, if:

(a) He falsely personates another and causes the person so personated to be registered; or,

(b) Falsely represents his name or other information required by registration to any registrar or deputy registrar and causes his name to be registered; or,

(c) Causes any name to be placed upon the registry lists other than in the manner provided by this act.

History: En. Sec. 25, Ch. 368, L. 1969.

23-3007. Registration of infirm elector at his residence. (1) If an elector is unable to appear before the registrar or a deputy registrar because of physical infirmity, he may send written notice to the registrar or to a deputy registrar asking that his registration be made at his residence.

(2) No person is entitled to receive reimbursement for expenses incurred in complying with this section.

History: En. Sec. 26, Ch. 368, L. 1969.

23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary. (1) A person who is not eligible to register because of residence requirements but who will be eligible on or before election day, may register with the registrar if he answers the questions of the registrar and it appears that he will become qualified to vote by election day.

(2) A person shall not be permitted to register until he attains United States citizenship.

History: En. Sec. 27, Ch. 368, L. 1969.

23-3009. Transferring registration to another precinct. If an elector changes his residence, he may transfer his registration to the new precinct by:

(1) Executing in person a new registry card before a deputy registrar of the new precinct, and the deputy registrar shall not receive compensation for this service, or

(2) Making a request in writing to the registrar in a form prescribed by the secretary of state.

History: En. Sec. 28, Ch. 368, L. 1969.

23-3010. Procedure for transferring registry. (1) When a request to transfer registry is received, the registrar shall compare the elector's signature on the request with his signature on the registry card and may question the elector on any information shown on the registry card.

(2) If the registrar is satisfied, he shall endorse on the registry card the date of the transfer and the precinct to which transferred.

(3) The registrar shall file the registry card in the register of the precinct of the elector's residence, or in the register of the precinct of transfer, and transfer the elector's name to the proper precinct in the register.

(4) Where the elector changes his place of registration as provided in section 23-3009 (1), the registrar shall file the new card in the register of the precinct of the elector's present residence and transfer the elector's name to the proper precinct in the register. The old registration card shall be marked "canceled" and placed in the "canceled file."

History: En. Sec. 29, Ch. 368, L. 1969.

23-3011. Inquiry as to previous registration—procedure. (1) The registrar shall question each person registering to ascertain whether he has previously registered in this state. If the person has previously registered, the registrar shall enter his name in a separate file which is indexed by counties. Cards for this purpose shall be in the form prescribed by the secretary of state.

(2) Not more than three (3) days after closing the registration books, the registrar shall forward the cards to the registrar where the applicant previously voted by registered or certified mail. The delivery receipt shall be kept on file with other election records.

(3) Upon receiving notice to cancel the registration of an elector, the registrar shall immediately draw red lines through the elector's name in the register and on the registration card.

History: En. Sec. 30, Ch. 368, L. 1969.

23-3012. Lists of registered electors—precinct register—indication of taxpayer electors. (1) Immediately after registration is closed, the registrar shall prepare lists of all registered electors. He shall also prepare a precinct register for each precinct and deliver it to the judges of election prior to the opening of the polls.

(2) The registrar shall stamp "taxpayer" beside the name of an elector who is a taxpayer to show he is qualified to vote in an election at which voting is validly limited by the constitution to taxpayers.

History: En. Sec. 31, Ch. 368, L. 1969; amd. Sec. 5, Ch. 158, L. 1971.

for "an election for the incurring of a state debt, issuance of bonds or debentures by the state, or the levying of a state tax"; and deleted from subsection (2) a second sentence reading "No other evidence is necessary to show that the elector is a taxpayer."

Amendments

The 1971 amendment substituted "an election at which voting is validly limited by the constitution to taxpayers" at the end of the first sentence of subsection (2)

23-3013. Cancellation of registry for failure to vote—reregistration—cancellation of registry of elector in United States service. (1) Except as provided in subsections (3) and (4) of this section, immediately after every general biennial election, the registrar shall:

(a) Compare the electors who have voted in each precinct, as shown by the official pollbooks, with the official register of each precinct;

(b) Remove the registry cards of all electors who failed to vote, mark each card "canceled," and place canceled cards for the entire county in alphabetical order in the "canceled file";

(c) Notify each elector in writing before the thirty-first day after cancellation by sending notice to his post-office address as shown on the election records.

(2) An elector whose card is removed and canceled may register in the same manner as his original registration was made.

(3) The registration of an elector in the United States service may be cancelled upon failure to vote in the previous two (2) general elections.

(4) The registration of an elector who actually votes by absentee ballot not be cancelled if his ballot is received and rejected by the registrar within ten (10) days succeeding the election.

History: En. Sec. 32, Ch. 368, L. 1969; amd. Sec. 1, Ch. 254, L. 1971.

(4)" in subsection (1); added subsection (4); and made minor changes in phraseology and punctuation.

Amendments

The 1971 amendment inserted "and

23-3014. Cancellation of registry for other reasons—reregistration.

(1) The registrar shall cancel any registration card:

(a) At the written request of the person registered;

(b) When a certificate of the death of any elector is filed;

(c) Within forty-five (45) days prior to the closing of registration three (3) qualified registered electors residing within the precinct may challenge an elector by filing affidavits giving the name of the challenged elector, his registry number, his residence, and stating of the personal knowledge of the affiant the person registered does not reside at the place designated on his registration card;

(d) When the insanity of the elector is legally established;

(e) If a certified copy of a final judgment of conviction of any elector of a felony is filed;

(f) If a certified copy of a court order directing the cancellation is filed with the registrar.

(2) Within thirty (30) days after registration has been canceled, the registrar shall send written notice to the elector at the address shown on the registration card. If a person proves to the registrar that he is qualified, he may reregister.

(3) At the close of registration, the court clerk of each county shall send a list of those electors whose registrations have been cancelled due to a felony conviction to the secretary of state. The secretary of state shall compile a list of all such electors and send a copy of the list to each registrar.

History: En. Sec. 33, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 299, L. 1971.

Amendments

The 1971 amendment added subsection (3).

23-3015. Challenges prior to election—registrar's duties—challenges on election day—election judges' duties. (1) An elector may challenge the qualifications of another elector any time not later than twenty (20) days prior to an election. The challenge must:

(a) Be filed with the registrar and be signed by the elector;

(b) Be verified by the affidavit of the elector that the elector designated is not entitled to vote;

(c) State the grounds of the challenge, objection, and disqualification.

(d) Notify the elector within five (5) days by registered United States mail that his qualifications as an elector have been challenged.

(2) The registrar shall:

(a) File the affidavit of challenge in his office;

(b) Deliver a correct copy of the affidavit to the judges of election together with a copy of the precinct registers, check lists, and other documents;

(c) Write opposite the name of any person whose qualifications are challenged the words, "to be challenged."

(3) An elector's right to vote may also be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(4) The election judges shall:

(a) Test the qualifications of the elector challenged under oath if he applies to vote;

(b) Compare the answers of the elector with the entries in the precinct register books;

(c) Not permit him to vote if the elector is found to be disqualified because the answers given do not correspond to the entry in the precinct registers, or the elector is disqualified for any cause under the law, or he refuses to take an oath or affirmation as to his qualifications.

(5) The election judges may require the challenged elector to produce one (1) or more electors of the county to be examined under oath as to

the qualifications of the challenged elector, and may also request assistance from the county attorney and the registrar in determining the elector's qualifications.

History: En. Sec. 34, Ch. 368, L. 1969.

Date for Holding Election

Under prior section, a period of not less

than sixty days was required to lapse between time an election was called and time it was held. State ex rel. Eagye v. Bawden, 51 M 357, 361, 152 P 761.

23-3016. Close of registration—procedure. (1) The registrar shall:

(a) Close registrations as follows: (i) for thirty (30) days before any federal election; (ii) at noon the day before election for voters entitled under the provisions of section 23-3724, R.C.M. 1947, to register to that time; (iii) for forty (40) days before any election other than hereinabove provided.

(b) Immediately after closing registration send the secretary of state a certificate showing the number of voters registered in each precinct in a county;

(c) Sixty (60) days before the election, publish notice in a newspaper of general circulation in the county specifying the day registrations will close and post the notice in each precinct. The published notice shall continue for a period of twenty (20) days.

(2) The notice shall state that electors may register for the ensuing election by appearing before the registrar or before any deputy registrar as provided by law.

History: En. Sec. 35, Ch. 368, L. 1969; amd. Sec. 1, Ch. 385, L. 1971.

Amendments

The 1971 amendment rewrote subdivision (1) (a) which formerly read, "Close all registration for forty (40) days before any election"; substituted "Sixty days before the election" for "Twenty (20) days before the closing" at the beginning

of the second paragraph of subdivision (1) (b); and made minor changes in style and phraseology.

Effective Date

Section 2 of Ch. 385, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

23-3017. Registration while registry closed preceding election. During the time when the registry is closed preceding any election, a person may register and the registrar shall keep his registry card in a separate file until the official register is again open. At that time, all cards in the temporary file shall be placed in their proper position in the official register.

History: En. Sec. 36, Ch. 368, L. 1969.

23-3018. Name on precinct register prima facie evidence of right to vote—elector's identity—election judges' duties as to precinct register.

(1) A person shall not vote at an election mentioned in this act unless his name appears on election day in the copy of the official precinct register furnished by the registrar to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) If the election judges have good reason to believe, or if they are informed by a qualified elector that the person offering to vote is not the person registered in that name, he shall not be allowed to vote until he

has proved his identity by the oath of two (2) reputable electors of the precinct in which he is registered.

(3) The election judges in each precinct at every general or special election in a precinct register certified to them by the registrar shall:

(a) Mark a cross (X) upon the line opposite the name of the elector;

(b) Require the elector to sign his name upon one of the precinct registers;

(c) Require an elector, who is not able to sign his name, to produce two (2) electors who shall make an affidavit before the election judges in a form prescribed by the secretary of state. One of the election judges shall write on the affidavit the elector's name, note his inability to sign, and the names of the electors making affidavits. The affidavits shall be returned to the registrar with the other election records.

History: En. Sec. 37, Ch. 368, L. 1969.

Failure To Sign

Failure of the election judges of a precinct to require the electors to sign the registry books before voting at a pri-

mary election was the fault of the judges and not of the electors, and therefore their votes were legal and properly counted. *Thompson v. Chapin*, 64 M 376, 383, 209 P 1060.

23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register. In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action may be joined as defendants.

History: En. Sec. 38, Ch. 368, L. 1969.

23-3020. Erroneous omission of name from precinct register—certificate.

(1) An elector whose name is erroneously omitted from a precinct register or other election register may secure from the registrar a certificate of the error stating the precinct in which he is entitled to vote and present the certificate to the election judges which will entitle him to vote.

(2) The certificate shall be marked "voted" by the election judges and returned by them with the precinct register.

History: En. Sec. 39, Ch. 368, L. 1969.

23-3021. Registration by naturalized citizen. When a naturalized citizen applies for registration, he must produce a certificate of naturalization or a certified copy upon which the registrar must enter the date and county where presented. The registrar must also enter the applicant's name.

History: En. Sec. 40, Ch. 368, L. 1969.

23-3022. Residence, rules for determining. For registration or voting, the residence of any person shall be determined by the following rules as far as they are applicable.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person may not gain or lose a residence while a student at any institution of learning, while kept involuntarily at any public in-

stitution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation.

(3) A person in the armed forces of the United States may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a man's family resides is presumed his place of residence. However, a man who takes up or continues his residence at a place other than where his family resided with the intention of remaining is a resident of the place where he resides.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence.

(10) The term of residence must be computed by including the day of election.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971.

Amendments

The 1971 amendment deleted "while employed in the service of the United States or of this state" after "lose a residence" in subdivision (2); and made a minor change in punctuation.

Acts and Intent of Voter

The residence of a voter is to be determined from his acts and intent; but this fact, like any other fact involved in a civil action or proceeding, may be established by circumstantial evidence, and any declarations of the voter touching the subject, if a part of the *res gestae*, or any declarations in disparagement of his right

to vote, if made at or before the election, may be received in evidence. *Sommers v. Gould*, 53 M 538, 544, 165 P 599.

Inapplicable to Licensing of Automobiles

Section prescribing the conditions determining the right to vote with respect to residence of the voter had no bearing upon the situs of one's property (an automobile) or the ownership thereof for purpose of taxation, or licensing. *Valley County v. Thomas*, 109 M 345, 386, 97 P 2d 345.

Presumption

Predecessor to subdivision (8) was held to be in reality a rule of evidence. *Carwile v. Jones*, 38 M 590, 602, 101 P 153.

23-3023. Printing of list of electors shown on precinct registers. (1) The registrar shall have a list printed of all registered electors shown on the precinct registers of the county or city ten (10) days or more preceding any election.

(2) The list shall show the name of the elector in full, the number and street of his residence if he resides within a city, his post-office address if he resides outside a city, and the registry number.

(3) Ten (10) days or more before any election, a copy of the list of registered voters shall be posted in each precinct. Sufficient copies of the lists shall be retained by the registrar and furnished to an elector upon request.

(4) If no declarations of nomination have been filed forty (40) days before a primary election of city offices, the city clerk shall immediately notify the registrar in writing and the list of registered electors for the city shall not be printed or posted.

(5) The list of registered voters prepared for a primary election may be posted and used for the general election only if a supplemental list giving the names of electors who have registered after the first list was prepared is printed and posted.

(6) The expense of printing this list shall be paid by the county or city in which the election is to be held.

History: En. Sec. 42, Ch. 368, L. 1969; class school district" after "city" in subsection (1); and deleted "or school district" after "city" in subsection (6).

Amendments

The 1971 amendment deleted "or first

23-3024. Preparation of precinct register. After the closing of the official register and before the election, the registrar shall:

(1) Prepare a "precinct register" for each precinct for use by clerks and election judges;

(2) List the names of electors in alphabetical divisions;

(3) Show all information from the registry card of each elector, except the oath of the elector;

(4) Deliver a certified copy of the precinct register to the election judges prior to the opening of the polls;

(5) Combine into one (1) precinct register the names of all electors in the several precincts where the precincts in city elections, or elections in school districts of the first class, include more than one (1) county precinct.

(6) If no declarations of nomination have been filed forty (40) days before a primary election for city offices, the city clerk shall immediately notify the registrar in writing, and the precinct register or registers shall not be prepared.

History: En. Sec. 43, Ch. 368, L. 1969.

23-3025. Attempting to vote at another polling place after vote has been rejected a misdemeanor. A person whose vote has been rejected who offers to vote at the same election at any other polling place is guilty of a misdemeanor.

History: En. Sec. 44, Ch. 368, L. 1969

23-3026. Commissioners to provide registrar with sufficient help. The commissioners shall provide the registrar with sufficient help for the duties imposed by this act. The cost of stationery, printing, publishing and posting are a proper charge against the county.

History: En. Sec. 45, Ch. 368, L. 1969.

23-3027. Charges to city or school district—warrant—when no precinct registers required. (1) For each name entered on a precinct register prepared for a city or school district, the registrar shall charge the city or school district three cents (\$.03). He shall also charge the actual expense incurred on account of the city or school district.

(2) The council or board of school trustees shall order a warrant drawn for the expenses specified in subsection (1) of this section within thirty (30) days after notification of the charges.

(3) If no general city election is required, the registrar shall not prepare precinct registers.

(4) If there are only as many candidates nominated as there are vacancies on a first class school district board of trustees, the registrar shall not prepare precinct registers.

(5) Within two (2) days after nominations are legally closed, the city clerk or clerk of a first class school district shall notify the registrar when no precinct registers are required.

History: En. Sec. 46, Ch. 368, L. 1969; amd. Sec. 3, Ch. 243, L. 1971.

Amendments

The 1971 amendment deleted "first class" before "school district" in the first sen-

tence of subsection (1); and deleted "in printing and posting the lists of electors, publishing notice, and other expenses incurred" after "actual expense incurred" in the second sentence of subsection (1).

23-3028. Copies of precinct registers available to any person upon written request—charge. Upon written request, the registrar shall furnish any person a copy of the official precinct registers. Upon delivery, the registrar shall collect a charge of five cents (\$.05) for each name entered in the official register.

History: En. Sec. 47, Ch. 368, L. 1969.

23-3029. Violations of act, penalty for. (1) Any person or any officer of a county, city, or school district required to perform duties under this act who willfully or knowingly fails to do so shall be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1000), or be imprisoned in the county jail for not less than three (3) months nor more than one (1) year. If an officer is involved, the judge of the district court shall also remove him from office.

(2) Any person who makes false answers; violates or attempts to violate any of the provisions of this act; mutilates, secretes, destroys, or alters election records except as provided by law; or knowingly encourages another to violate the act; or any public officer or other person upon whom any duty is imposed by this act who willfully neglects that duty or willfully performs the duty in a way which hinders the purposes of this act is guilty of a felony. Upon conviction he shall be imprisoned for not less than one (1) year nor more than fourteen (14) years. If a public officer, he shall also forfeit his office and never be qualified to hold public office again[,] either elective or appointive.

History: En. Sec. 48, Ch. 368, L. 1969.

CHAPTER 31

ELECTION PRECINCTS

Section

23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts.

23-3102. Ward boundaries, certification of changes—map.

23-3103. Designation of polling place.

23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts. (1) The territorial unit for elections is the election precinct.

(2) The commissioners of each county shall establish a convenient number of election precincts equalizing the number of electors in each precinct as nearly as possible.

(3) The commissioners may change the boundaries of precincts but not between January 1 and December 1 in any year during which a general biennial election will be held.

(a) All changes must be certified to the registrar three (3) days or less after the change is made.

(b) All election precincts shall be designated by numbers, names, or both.

(c) Not more than ten (10) days after an order of the commissioners has established or changed the boundaries of an election precinct, the commissioners shall cause to be prepared and delivered a map to the registrar showing the borders of all precincts and school districts within the county.

(4) The boundaries of election precincts must conform to the wards of cities of the first, second, and third class and the boundaries of first class school districts only.

(5) A ward or school district may be divided into two (2) or more precincts, and a precinct may be divided into two (2) or more polling places.

(6) In cities not of the first, second, or third class, precincts may include two (2) or more wards, or may comprise territory included by one (1) or more wards together with contiguous territory lying outside the incorporated limits of the cities.

History: En. Sec. 18, Ch. 368, L. 1969.

23-3102. Ward boundaries, certification of changes—map. Not more than ten (10) days after ward boundaries have been changed, the city council must certify any changes or alteration in the ward boundaries to the registrar and deliver to him a map showing boundaries of the wards, the streets, avenues and alleys by name and the wards by numbers.

History: En. Sec. 19, Ch. 368, L. 1969.

23-3103. Designation of polling place. The commissioners shall make an order designating the place within each precinct where the election

will be held at the session at which election judges are appointed. Copies of the order must be posted immediately in three (3) public places in the precinct.

History: En. Sec. 20, Ch. 368, L. 1969.

Changing Designation

Where a board of county canvassers refused to canvass election returns from a precinct on the ground that it appeared upon the face of the returns that the election had not been held at the place designated by the board of county commissioners, and on application for writ of mandate to compel them to act, nothing was shown affirmatively by pleadings or

otherwise that the judges of election at the precinct had not pursued this section giving them authority to change the place of election upon two days' notice if for any reason it cannot be held at the place appointed, it will be presumed that official duty was regularly performed by them and that they did change it, and the writ will issue commanding action. State ex rel. Moore v. Patch, 65 M 218, 225, 211 P 202.

CHAPTER 32

JUDGES AND CLERKS OF ELECTIONS

Section

- 23-3201. Appointment of election judges and clerks—second board of election judges—duties.
- 23-3202. Manner of choosing election judges and clerks—vacancies—candidates and their relatives ineligible—exceptions.
- 23-3203. Judges and clerks to serve until others appointed.
- 23-3204. Registrar to notify judges and clerks of their appointment and of impending general elections—judges to post notices of election.
- 23-3205. Oath of judges and clerks—may administer oaths.
- 23-3206. Instruction of judges and clerks.
- 23-3207. Compensation of judges and clerks.

23-3201. Appointment of election judges and clerks—second board of election judges—duties. (1) At their regular meeting next preceding a general primary election, the commissioners shall appoint five (5) election judges and two (2) clerks for each precinct having two hundred (200) or more electors and three (3) election judges and two (2) clerks for each precinct having less than two hundred (200) electors. Judges for new precincts shall be appointed based upon the estimated number of electors.

(2) If a precinct has three hundred fifty (350) or more electors, the commissioners may appoint a second board of five (5) election judges and two (2) clerks who shall have the same qualifications as the first board. The second board shall:

- (a) Meet at their respective polling places as ordered;
- (b) Count and tabulate ballots as soon as the first board has completed their duties in regard to the voting.

(3) If counting and tabulating the ballots is not completed by 8 a. m. on the day following the election, the first board shall reconvene and relieve the second board until 8 p. m. when the second board shall again reconvene and relieve the first board until the ballots are counted and tabulated.

(4) The election judges constituting the boards shall number the ballots and count the tally upon the tally sheets and indicate upon the tally sheets the work of each board. The board completing the county shall certify the returns as required by law.

History: En. Sec. 49, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 258, L. 1971.

Amendments

The 1971 amendment inserted "and two
(2) clerks" in two places in subsection
(1) and in one place in subsection (2).

23-3202. Manner of choosing election judges and clerks—vacancies—candidates and their relatives ineligible—exceptions. (1) The election judges and clerks shall be chosen from lists of qualified voters submitted by the two (2) major political parties thirty-five (35) days or more before the commissioners meeting which precedes the next primary election.

(2) The list of each party may contain twice the number of election judges and clerks to be appointed and not more than a majority may be appointed from one (1) political party for each precinct.

(3) The commissioners may appoint election judges and clerks in their discretion to fill vacancies or if a major political party fails to submit a list of election judges.

(4) No person shall be appointed to serve as an election judge or election clerk who is a candidate, spouse of a candidate, or related to a candidate for office within the second degree of consanguinity. However, this subsection does not apply to school district elections nor to candidates for precinct committeeman or committeewoman.

History: En. Sec. 50, Ch. 368, L. 1969;
amd. Sec. 2, Ch. 258, L. 1971.

clerks" in subsections (1), (2), and (3);
and substituted "may" for "must" after
"The list of each party" in subsection (2).

Amendments

The 1971 amendment inserted "and

23-3203. Judges and clerks to serve until others appointed.

(1) The election judges and clerks continue to be judges of all elections held in their precincts until other judges and clerks are appointed.

(2) The commissioners shall fill vacancies which occur in the office of election judge or clerk.

History: En. Sec. 51, Ch. 368, L. 1969;
amd. Sec. 3, Ch. 258, L. 1971.

Amendments

The 1971 amendment deleted former subsection (1) reading, "The election judges may appoint two (2) persons having the

same qualifications as themselves to act as clerks of the election who serve at the pleasure of the judges"; redesignated former subsections (2) and (3) as subsections (1) and (2); inserted "and clerks" in two places in subsection (1); and added "or clerk" in subsection (2).

23-3204. Registrar to notify judges and clerks of their appointment and of impending general elections—judges to post notices of election.

(1) The registrar must notify the election judges and clerks in writing of their appointment.

(2) Twenty (20) days or more before any general election, the registrar shall mail two (2) notices of the election to the election judges. The notices shall be in the form prescribed by the secretary of state.

(3) Ten (10) days or more prior to the election, the election judges shall post one (1) notice at the place where the election will be held and the other in one (1) of the most public places in the precinct.

History: En. Sec. 52, Ch. 368, L. 1969;
amd. Sec. 4, Ch. 258, L. 1971.

Amendments

The 1971 amendment inserted "and clerks" in subsection (1).

23-3205. Oath of judges and clerks—may administer oaths. (1) Before votes are cast, the election judges and clerks must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other and to the clerks.

(2) Any election judge or a clerk may administer and certify oaths required during an election.

History: En. Sec. 53, Ch. 368, L. 1969.

23-3206. Instruction of judges and clerks. (1) Before each election, all election judges and clerks who do not possess a certificate of instruction shall be instructed by a person named by the commissioners in the powers, duties, and liabilities of election judges.

(2) The instructor shall call meetings as necessary.

(a) The election judges and clerks shall attend each meeting and receive at least two (2) hours of instruction.

(b) Each election judge and clerk shall receive compensation fixed by the commissioners at the prevailing federal minimum wage for instruction to be paid at the same time and in the same manner as for services on election day.

(3) Each judge and clerk shall receive a certificate of completion from the instructor upon completion of the course. Each certificate is valid for a period of two (2) years.

(4) No person shall serve as election judge or clerk without a valid certificate. However, this does not apply to persons filling vacancies in emergencies.

(5) Notice of place and time of instruction must be given to the county chairmen of the two (2) major political parties by the commissioners.

History: En. Sec. 54, Ch. 368, L. 1969; amd. Sec. 5, Ch. 258, L. 1971. clerks" in subdivisions (1), (2) (a), (2) (b), and (3); and inserted "or clerk" in subsection (4).

Amendments

The 1971 amendment inserted "and

23-3207. Compensation of judges and clerks. The compensation of election judges and clerks shall be fixed by the commissioners at the prevailing federal minimum wage and be paid from county funds. The commissioners shall audit the accounts.

History: En. Sec. 55, Ch. 368, L. 1969.

CHAPTER 33

PRIMARY ELECTIONS AND NOMINATIONS BY CERTIFICATE

Section

- 23-3301. Date of primary election—candidates to be selected.
- 23-3302. Primaries in cities over certain size—procedure.
- 23-3303. Notices of election.
- 23-3304. Declaration of nomination—filing—fees—printing of victorious write-in candidates on general election ballot.
- 23-3305. Deadline for filing nominating declarations—persons with whom filed.
- 23-3306. Register of candidates—public record—disposition of pollbooks, tally sheets, ballots, etc.

- 23-3307. Arrangement of information concerning candidates—duties of secretary of state—duties of registrar or city clerk.
- 23-3308. Ballots, how arranged and voted.
- 23-3309. Official and sample ballots—preparation and number.
- 23-3310. Election clerks' and judges' duties upon closing of polls.
- 23-3311. Tally sheets—keeping and announcing the tally—statement.
- 23-3312. Duties of election clerks and judges after canvassing votes—seal.
- 23-3313. Abstracts of votes, when and how made—decision by lot in event of tie—certificate for compensation—highest number of votes nominates.
- 23-3314. Copy of abstracts to be sent secretary of state—canvass by secretary of state—governor's certificate of nomination and proclamation—decision by lot in event of tie.
- 23-3315. Error in ballot or other wrongful or neglectful act.
- 23-3316. Contest—notice—hearing—how tried and decided—certificate.
- 23-3317. Penalty for violation of act—officials—candidates.
- 23-3318. Certificates of nomination by individuals or parties not appearing on prior ballot—requisites—applicability.
- 23-3319. Certificates of nominations to be preserved—certification of candidates' names and descriptions—statement of votes received by candidate.
- 23-3320. Parties governed by act—right to use of party name—printing of candidates' names on ballots—parties that may nominate by certificate.
- 23-3321. Declining nomination—vacancies before and after primary.

23-3301. Date of primary election—candidates to be selected. The primary election shall be held on the first Tuesday in June preceding any general election to select candidates for:

- (1) United States senators and representatives in Congress;
- (2) Other elective state, district, and county officers;
- (3) Delegates to any constitutional convention who will be chosen at the ensuing general election;
- (4) County central committeemen and committeewomen by the political parties.

History: En. Sec. 56, Ch. 368, L. 1969.

23-3302. Primaries in cities over certain size—procedure. In cities having a population of three thousand five hundred (3,500) or more as shown by the most recent federal or state census:

- (1) The nomination of candidates by primary election for city offices shall be subject to the provisions of this chapter;
- (2) Political parties shall file declarations of nominations for city offices with the city clerk;
- (3) The duties of the city clerk are the same as the registrar in conducting the primary elections, and the city clerk shall send notices of the primary election in the same manner as registrars send notices for nominations for county offices at primary elections;
- (4) On the fourteenth day preceding a city election, the cities shall hold primary elections;
- (5) If no declarations are filed forty (40) days or more before the primary election, no primary election shall be held and the city clerk shall certify to the registrar thirty-five (35) days or more before the date of the primary election that no petitions have been filed;
- (6) The council shall;
 - (a) establish city voting precincts and wards,
 - (b) appoint city judges and clerks of elections and other officers necessary for the election.

(c) perform other necessary duties in the same manner prescribed for city elections.

History: En. Sec. 57, Ch. 368, L. 1969;
amd. Sec. 2, Ch. 343, L. 1971.

Amendments

The 1971 amendment made a minor change in punctuation.

23-3303. Notices of election. (1) Twenty (20) days before any primary election, the registrar shall prepare printed notices of the election and mail two (2) notices to each judge of election.

(2) Each judge and clerk shall immediately post the notices in public places in their precinct.

(3) Notices shall be in the form, and contain information, as prescribed by the secretary of state.

History: En. Sec. 58, Ch. 368, L. 1969.

23-3304. Declaration of nomination—filing—fees—printing of victorious write-in candidates on general election ballot. (1) Each candidate in the primary election, shall send a declaration of nomination to the secretary of state, registrar, or city clerk.

(2) The candidate must sign the declaration and send with it the required filing fee, to be acknowledged by a notary public if by mail, or by the officer of the office at which the filing is made.

(3) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(4) Nominating declarations are filed:

(a) In the office of secretary of state for congressional offices, state or district offices to be voted for in more than one (1) county, members of the legislative assembly, and judges of the district court;

(b) In the office of the registrar for county and district offices to be voted for in one (1) county only, and for township and precinct offices;

(c) In the office of the city clerk for all city officers.

(5) Filing fees are as follows:

(a) For offices having a salary of one thousand dollars (\$1,000) or less per annum, ten dollars (\$10), except candidates for the legislative assembly or lieutenant governor must pay fifteen dollars (\$15);

(b) For offices having a salary of more than one thousand dollars (\$1,000) per annum, one per cent (1%) of the total annual salary;

(c) For the offices of county commissioner;

(i) in counties of the first class, forty dollars (\$40),

(ii) in counties of the second class, thirty-five dollars (\$35),

(iii) in counties of the third class, thirty dollars (\$30),

(iv) in counties of the fourth class, twenty-five dollars (\$25),

(v) in counties of other classes, ten dollars (\$10),

(d) For offices in which compensation is paid in fees, five dollars (\$5);

(e) For state, county, and precinct committeemen, delegates to national conventions, and presidential electors, no fees are required.

(6) A person nominated by having his name written in on the pri-

mary ballot and desiring to accept the nomination shall not have his name printed on the general election ballot unless he:

(a) Files with the secretary of state, registrar, or city clerk, at least ten (10) days after the primary a written declaration indicating his acceptance of the nomination;

(b) Pays the required filing fee,

(c) Received at least five per cent (5%) of the votes cast for the office at the last preceding general election.

(7) The declaration for nomination shall be in form and contain information, prescribed by the secretary of state. Every declaration must be signed by the elector seeking nomination.

History: En. Sec. 59, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Time for Filing Acceptance by Write-in Candidate

Under prior statute requiring write-in candidate to file within ten days after "election," the term "election" meant the day of election and not the day on which the canvass of the ballots was completed,

hence a candidate for house of representatives who filed acceptance 18 days after election was not entitled to a writ of mandate to compel the county clerk to include his name on the general election of official ballot. State ex rel. Wulf v. McGrath, 111 M 96, 97, 106 P 2d 183.

23-3305. Deadline for filing nominating declarations—persons with whom filed. Nominating declarations shall be filed not later than 5 p.m. forty (40) days before the date of the primary election. Declarations for nomination to an office filled by election throughout the state, as judge of a district court, to an office filled by election in more than one (1) county, or as a member of the legislative assembly shall be filed with the secretary of state. Declarations for nomination to an office filled by election in one (1) county, or district or city shall be filed with the registrar or city clerk.

History: En. Sec. 60, Ch. 368, L. 1969.

23-3306. Register of candidates—public record—disposition of poll-books, tally sheets, ballots, etc. (1) The secretary of state, registrar, and city clerk shall keep a "Register of Candidates for Nomination at the Primary Nominating Election." The entries in the register shall contain on separate pages for each political party showing:

(a) The title of the office sought, and the name and residence of each candidate;

(b) The name of his political party;

(c) The date of receiving the declaration for nomination signed by the candidate;

(d) Other information as may aid in arranging the official ballot.

(2) Immediately after the canvass of votes of the primary election, the officer shall enter in the register the date of entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

(3) When filed, the registers, declarations of nomination, letters and notices, and other documents required by law are public records and open

to inspection under proper regulation. Certified copies shall be available upon payment of the fee.

(4) The registrar shall keep all pollbooks, tally sheets, ballots, ballot stubs, and other documents for one (1) year, and then he shall destroy them.

History: En. Sec. 61, Ch. 368, L. 1969.

23-3307. Arrangement of information concerning candidates—duties of secretary of state—duties of registrar or city clerk. (1) Not more than forty (40) days and not less than thirty-two (32) days before the date of the primary election, the secretary of state shall:

(a) Arrange all names and information concerning candidates contained in the valid nominating declarations;

(b) Certify the arrangement under state seal, file it in his office, and transmit a duplicate by registered mail to each registrar;

(c) Post a duplicate in a conspicuous place in his office until after the primary election.

(2) Not more than thirty (30) days, and not less than twenty (20) days before the date of the primary election, the registrar or city clerk shall:

(a) Arrange, as required by law, the names and other information concerning the candidates and parties named in the valid nominating declarations which have been certified to him or filed with him;

(b) Certify the arrangement, file it in his office, and post a duplicate in a conspicuous place in his office until after the primary;

(c) Have colored sample ballots and the official ballots printed as required by law.

History: En. Sec. 62, Ch. 368, L. 1969.

23-3308. Ballots, how arranged and voted. (1) At the primary, there shall be a ballot for each political party entitled to participate. Each ballot shall be printed on a separate sheet of white paper of the same size, folded, and securely fastened at the top.

(2) Candidates' names shall be arranged alphabetically by surnames, under the offices and under the proper party designation. When two (2) or more persons are candidates for nomination for the same office, the registrar shall divide the ballot to provide a rotation of the names of the candidates as follows:

(a) Divide all county ballot forms into sets equal in number to the greatest number of candidates for nomination or election to any office;

(b) Arrange the sets so that candidates' names are rotated by removing one name from the top of the list for each nomination or office and place the name or number at the bottom of the list for each successive set of ballot forms; however, in printing ballots for use in any one (1) precinct, only one (1) set shall be used and they shall be identical;

(c) If an elector writes the name of a person upon a ballot, and the person's name appears as a candidate upon another ballot, the ballot shall

count for the person only as a candidate of the party upon whose ticket his name is written;

(d) If a person is nominated upon more than one (1) ticket, not later than ten (10) days after the election he shall file written notification with the secretary of state, registrar, or city clerk the party under which his name is to appear upon the ballot for the general election, and, if he fails to notify the proper officers, his name shall appear under the party with whom his nominating declaration was first filed;

(e) If a person fails to be nominated upon the party ticket contained in his nominating declaration, his name shall not be printed upon any ballot with party designation;

(f) This act does not preclude an elector from having his name printed upon the ballot as an independent candidate, and no candidate shall have his name printed on more than one (1) ticket.

(3) Ballots shall be printed on white paper in the form of the Australian ballot and the candidates of each party shall be printed on a separate ticket.

(4) After preparing his ballot, the elector shall detach it from the remaining tickets and fold it so that the face is concealed and the official stamp is seen;

(a) The elector shall fold the remaining tickets, vote the marked ballot without leaving the polling place, and deposit the remaining tickets in a separate box marked as the blank ballot box;

(b) Immediately after the recount period, the election judges shall, without examination, destroy the tickets deposited in the blank ballot box.

History: En. Sec. 63, Ch. 368, L. 1969.

23-3309. Official and sample ballots—preparation and number. (1) Ballots equal to the number of voters entitled to vote in the primary shall be printed and furnished to each election precinct.

(2) If a political party desires sample ballots its political committee may order them from the registrar or city clerk and pay the costs of printing. The registrar or city clerk shall order delivery in writing of the sample ballots and no sample ballots shall be printed without an order from the registrar or city clerk.

(3) Sample ballots shall be duplicates of the official ballot, but shall not be printed on white paper, shall not have the same margins, and shall not have perforated stubs.

History: En. Sec. 64, Ch. 368, L. 1969.

23-3310. Election clerks' and judges' duties upon closing of polls. Immediately after the polls are closed at a primary election, the election clerks and judges shall open the ballot boxes and:

(1) Count the ballots cast by each political party and fasten the ballots cast for each political party into separate files,

(2) Take the tally sheets provided by the registrar and count the ballots for each political party,

- (3) Certify the number of votes cast for each candidate for each office,
- (4) Place the counted ballots in the box.

History: En. Sec. 65, Ch. 368, L. 1969.

23-3311. Tally sheets—keeping and announcing the tally—statement.

(1) The registrar shall furnish tally sheets for each political party having candidates in the primary election for each voting precinct. Tally sheets shall contain the names of the candidates, names of the political parties designated at the head, and be numbered in the order in which the names appear on the official ballot.

(2) Tally sheets shall show:

- (a) The number and name of each person voted for;
- (b) Office for nomination to which each person was voted for;
- (c) Total number of votes cast for each candidate for nomination.

(3) The election clerks and judges shall audibly announce the tally or count, and shall keep the tally in the form prescribed by the secretary of state. The tally or count shall be certified by the election clerks and judges.

(4) The election clerks shall in ink:

- (a) Keep tally upon the prescribed tally sheet of each political party;
- (b) Total the number of tallies and write the total immediately to the right of the last tallies for each candidate and also in the columns headed "total vote";

(c) Prepare the certificate required by subsection (3) of this section;

(d) Immediately upon completion of the count, sign the tally sheets, and each clerk shall certify which sheets were kept by him;

(e) If the chairman and judges are satisfied with the correctness of the tally sheets, they shall sign all the tally sheets.

(5) The election clerks shall then prepare a statement of that portion of the tally sheets showing the number and name and political party of each candidate for nomination and the office and total votes received by each in the precinct, and shall prepare the certificate. The election clerks and judges who complete the count shall sign the statement and immediately post it in a conspicuous place outside of the polls. The statement shall remain posted for ten (10) days.

History: En. Sec. 66, Ch. 368, L. 1969.

23-3312. Duties of election clerks and judges after canvassing votes—seal.

(1) Immediately after canvassing votes, the election clerks and judges who complete the count shall enclose the pollbooks in separate envelopes and securely seal them. The election clerks and judges shall:

(a) Enclose the tally sheets in separate envelopes and securely seal them;

(b) Enclose the precinct registers in separate envelopes and securely seal them;

(c) Enclose all ballots fastened together and in separate envelopes and securely seal them;

(d) Specify in ink the contents, and address each package to the registrar of the county in which the election precinct is situated;

(e) Mark the sealed ballot packages on the outside showing what numbers are contained, but once sealed they are not to be opened until ordered by the proper court.

(2) When the count is completed, the sealed ballots shall be placed in two (2) ballot boxes, the boxes locked and the seal of the board pasted over the keyhole and rim of the lid so that to open the box the seal must be broken. The registrar or the canvassers making the abstracts of the votes shall not break the seal, nor shall anyone break the seal except upon court order in case of contest or on order of the commissioners when the boxes are needed for the ensuing election.

History: En. Sec. 67, Ch. 368, L. 1969.

23-3313. Abstracts of votes, when and how made—decision by lot in event of tie—certificate for compensation—highest number of votes nominates. (1) At 8 a.m. on the third day after the close of any primary election, or at 8 a. m. on a day sooner if all the returns are in, the registrar, taking two (2) assistants who are justices of the peace, county commissioners, or either, shall open the returns and make abstracts of the votes.

(2) Abstracts of votes for nomination of each party for governor, lieutenant governor, secretary of state, attorney general, state auditor, superintendent of public instruction, railroad commissioners, clerk of the supreme court, state treasurer, justices of the supreme court, United States senators, United States representatives, judges of the district court, and members of the legislative assembly, shall be on one (1) sheet, separately for each political party, and shall be forthwith transmitted to the secretary of state, as required by section 23-3314.

(3) Abstracts of votes for county and precinct offices shall be placed on separate sheets for each political party, and the registrar shall certify the nomination for each party and enter upon his register of nominations the name of each of the persons having the highest number of votes for nomination. He shall notify each person who is nominated by mail.

(4) If there is a tie for the same nomination in one (1) party, the registrar shall notify the affected persons to come to his office at a time set by the registrar. The registrar shall then decide publicly by lot which of the persons is the nominee. The registrar shall enter the name of the person chosen as nominee upon his register of nominations.

(5) The registrar shall, on receipt of the primary returns, make out a certificate stating the compensation the election clerks and judges are entitled to and transmit this certificate to the commissioners. The commissioners shall order the compensation paid out of the county treasury.

(6) In all primary elections, the person having the highest number of votes for nomination to any office is the nominee for his political party for that office.

History: En. Sec. 68, Ch. 368, L. 1969.

23-3314. Copy of abstracts to be sent secretary of state—canvass by secretary of state—governor's certificate of nomination and proclamation—

decision by lot in event of tie. (1) The registrar, immediately after making the abstracts of votes, shall send a copy of each of the abstracts by mail to the secretary of state.

(2) The secretary of state shall, in the presence of the governor and the state treasurer, proceed not later than fifteen (15) days after the date of the primary election to canvass the votes given for nomination for governor, United States senator, United States representative, lieutenant governor, attorney general, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, state auditor, justices of the supreme court, clerk of the supreme court, judges of the district court, members of the legislative assembly, and all other officers voted in any district comprising more than one county.

(3) The governor shall grant a certificate of nomination to the person having the highest number of votes for each office, and shall issue a proclamation declaring the nomination of each person by his party.

(4) When a tie exists between two (2) or more persons for nomination in the same party, the secretary of state shall immediately give notice to the persons tied, to attend in person or by attorney, at his office at a time appointed by him. He shall then publicly decide by lot which person is nominated by his party. The governor shall issue his proclamation declaring the nomination of that person.

History: En. Sec. 69, Ch. 368, L. 1969.

23-3315. Error in ballot or other wrongful or neglectful act. (1) Whenever it appears by affidavit to the district court, to the supreme court, or to a supreme court judge:

(a) That an error or omission has occurred, or is about to occur, in the printing of the name of any candidate or other matter on the official primary nominating election ballots;

(b) That any error has been, or is about to be, committed in the printing of the ballots;

(c) That the name of any person or any other matter has been, or is about to be, wrongfully placed upon the ballots;

(d) That any wrongful act has been performed by any judge or clerk of the primary election, registrar, canvassing board or member, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons has occurred or is about to occur; the court shall require by order the officer or person charged with the act or neglect to perform his duties required by law or show cause why the order should not issue.

(2) Failure to obey the court order is contempt.

(3) Any person aggrieved by the refusal or failure of any person to perform any duty required by this act shall, without derogation of any other right or remedy, be entitled to seek a writ of mandamus in the district court and the proceeding shall be immediately heard and decided.

History: En. Sec. 70, Ch. 368, L. 1969.

23-3316. Contest—notice—hearing—how tried and decided—certificate.

(1) Five (5) days or less after a person has been nominated, any person wishing to contest the nomination to any state, county, district, township, precinct, or city office shall give notice in writing to the person whose nomination he intends to contest briefly stating the cause for the contest.

(2) The contestant shall make application to the district court judge in the county where the contest is to be had. The judge shall then set the time for the hearing.

(3) The contestant shall serve notice three (3) days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(4) The judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling.

(5) Each party is entitled to subpoenas.

(6) The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination.

History: En. Sec. 71, Ch. 368, L. 1969. Procedure to contest of nomination, see M. R. Civ. P., Rule 81(a), Table A.

Cross-Reference

Application of Montana Rules of Civil

23-3317. Penalty for violation of act—officials—candidates. (1) If an election clerk or judge of a primary election, or other officer or persons on whom a duty is enjoined, willfully neglects that duty or commits any corrupt act in the discharge of his duty, he is guilty of a violation of this act. Upon conviction, he shall be imprisoned in the state prison for not less than one (1) year nor more than five (5) years, imprisoned in the county jail for not less than three (3) months nor more than one (1) year, or fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(2) If a candidate for nomination is guilty of any act which is wrongful or unlawful, or acts at the primary which would be sufficient to cause his removal from office if committed at the regular general election, he shall, upon conviction, be removed from office in the same manner as though the act had been committed at a regular general election, even though he may have been regularly elected and was not guilty of a wrongful or unlawful act at the election at which he was elected to his office.

History: En. Sec. 77, Ch. 368, L. 1969.

23-3318. Certificates of nomination by individuals or parties not appearing on prior ballot—requisites—applicability. Except as provided in subsection (6) of this section, nominations for public office by an individual or a political party which did not appear on the ballot in the next preceding election may be made by executing a certificate of nomination.

- (1) The certificate must be in writing and contain:
 - (a) The name of a candidate for the office to be filled;
 - (b) His residence, his occupation, and his business address.
- (2) If a certificate is filed by a political party which did not appear on the ballot in the next preceding election, it must contain the party name and in five (5) words or less the principle which such body represents.
- (3) The certificate must be signed by electors residing within the state and district, or political division in which the officer or officers are to be elected. Each elector signing a certificate shall add to his signature his place of residence, and his business address.
- (4) The number of signatures must be five per cent (5%) or more of the total vote cast for the successful candidate for the same office at the next preceding election.
- (5) The candidates for nomination shall file the certificates ninety (90) days prior to the date of the general election. Certificates of nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty (30) days and not less than fifteen (15) days previous to the day of election.
- (6) A person who desires to run for president or vice-president as an independent candidate, must file a certificate of nomination with the secretary of state. The certificate must have the signatures of electors equal to five per cent (5%) or more of the legal votes cast for governor at the next preceding general election. He must also nominate the required number of electors allowable to Montana and certify the names to the secretary of state.
- (7) This section shall not apply to nominations for special elections or to fill vacancies.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971.

the filing of certificates of nomination by candidates for municipal offices.

Amendments

The 1971 amendment added the second sentence of paragraph (5), relating to

Effective Date

Section 2 of Ch. 59, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 24, 1971.

DECISIONS UNDER FORMER LAW

Error in Certificate

Under the law governing conventions and primary meetings, an error in the party name on the certificate of nomination rendered it void. *State ex rel. Scharnikow v. Hogan*, 24 M 397, 401, 62 P 683.

The inadvertent failure to include the name of a convention nominee for a certain office in the certificate of nominations renders the certificate insufficient. *State ex rel. Galen v. Hays*, 31 M 227, 231, 78 P 301.

Party Candidate

It is by means of the certificate of nomination that the county clerk is informed how to prepare the official ballot for the electors. The secretary of state cannot certify a candidate nominated by electors, as the candidate of a political

party, for clearly he is not such a candidate and has no place in a group of candidates certified as nominated by a regular political party convention or organization, under the name of the party making such nomination. *State ex rel. Woody v. Rotwitt*, 18 M 502, 510, 511, 46 P 370.

Time of Filing

Prior law requiring certificates of nomination to be filed with the secretary of state not more than sixty nor less than thirty days before election was mandatory and a certificate of original nominations made at a party convention could not be filed less than thirty days before election. *State ex rel. Galen v. Hays*, 31 M 227, 230, 78 P 301.

23-3319. Certificates of nominations to be preserved—certification of candidates' names and descriptions—statement of votes received by candidate. (1) The secretary of state, registrars, and city clerks shall preserve all certificates of nominations for one (1) year. All certificates shall be open to public inspection under rules adopted by the various offices.

(2) Forty-five (45) days or more before an election, the secretary of state shall certify to the registrars the name and description of each person nominated, as specified in the certificates of nomination filed with him.

(3) Each election board shall transmit to the secretary of state a statement of the number of votes cast for a person as the candidate for the independent body by which he was nominated.

History: En. Sec. 79, Ch. 368, L. 1969.

23-3320. Parties governed by act—right to use of party name—printing of candidates' names on ballots—parties that may nominate by certificate. (1) Every political party which received three per cent (3%) or more of the total vote cast for governor at the next preceding general election in the county, district, or state for which nominations are proposed to be made, shall nominate its candidate for public office in the county, district or state under this act.

(2) Every political party, and its regularly nominated candidates, members and officers, has the sole and exclusive right to the use of the party name. No candidate for office may use any word of the name of any other political party or organization other than that by which he is nominated.

(3) An independent or nonpartisan candidate shall not use any word of the name of any existing political party or organization in his candidacy.

(4) The names of candidates for public office nominated under this act shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for public office in the same manner as the names of the candidates nominated by other methods are required to be printed on the official ballots.

(5) Any political party that did not receive three per cent (3%) or more of the total vote cast for governor, as provided in subsection (1) of this section, and any new political party about to be formed, may make nominations for public office as provided in section 23-3318.

History: En. Sec. 80, Ch. 368, L. 1969.

Presidential Electors Are Candidates for Public Office

Candidates for presidential electors were candidates for public office, within the meaning of prior section. State ex rel. Foster v. Mountjoy, 83 M 162, 168, 271 P 446.

Use of Term "Independent"

Assuming (but not deciding) that an

existing political party may use the term "Independent" in its party name, such use cannot deprive another candidate from employing that term in designating the character of his candidacy for the same office, and section prohibiting an independent candidate from using any word of the name of an existing political party has no application in such circumstances. State ex rel. Wheeler v. Stewart, 71 M 358, 361, 230 P 366.

23-3321. Declining nomination—vacancies before and after primary.

(1) Twenty (20) days or more before the election, a person nominated for public office may decline the nomination by a writing sent to the office with whom his nominating declaration is filed. In city elections, the declination shall be made ten (10) days or more before the election.

(2) If a vacancy occurs in the office of a candidate in case of death or removal from the state or district before the date of the primary, the vacancy shall be filled by the affected political party.

(3) When a vacancy occurs in the office of a candidate after the primary and before the general election in any district however constituted, the vacancy shall be filled as follows:

(a) The vacancy shall be filled by a committee of three (3) members selected from each county or district by the county central committees of the county or district of the affected political party.

(b) The secretary of the committee shall transmit a certificate to the secretary of state with the information contained on the original certificate plus the cause of the vacancy, the name of the person nominated, the office to be filled, and the name of the person for whom the nomination was made.

(c) When the certificate is filed with the secretary of state accompanied by the proper filing fee he shall insert the name of the person nominated to fill the vacancy.

(d) If the secretary of state has certified the nominations to the registrars, he shall immediately certify to the registrars the name of the person nominated to fill the vacancy, the office to be filled, the party or political principle he represents, and the name of the person for whom the nominee is substituted.

History: En. Sec. 82, Ch. 368, L. 1969;
amd. Sec. 5, Ch. 254, L. 1971.

Amendments

The 1971 amendment substituted "any district however constituted" for "a multi-county district" in subsection (3); inserted "or district" after "from each county" in subdivision (3) (a); inserted "of the county or district" after "central committees" in subdivision (3) (a); and inserted "accompanied by the proper filing fee" in subdivision (3) (c).

Cross-Reference

Inducement to accept or decline nomination, sec. 94-1456.

Defective Proceedings

An election will not be declared void by reason of nonprejudicial defects in the manner in which nomination was declined where question was raised after election. *Stackpole v. Hallahan*, 16 M 40, 51, 40 P 80.

Write-in Candidates

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill. *State ex rel. Wilkinson v. McGrath*, 111 M 102, 106 P 2d 186.

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candidate whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. *State ex rel. Wolff v. Geurkink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

DECISIONS UNDER FORMER LAW

Death after Election

Former law did not empower county central committee to make an original nomination of a candidate to an office to be filled at a special election where the officer-elect died after election and before induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

tion, and has authorized its committee to fill any vacancy that may occur, the filling of the vacancy by the committee upon the death or resignation of the candidate, or because the original certificate of nomination was or became insufficient or inoperative, may be made at any time before the day of election. State ex rel. Scharnikow v. Hogan, 24 M 397, 402, 62 P 683; State ex rel. Galen v. Hays, 31 M 227, 231, 78 P 301.

Time for Filling Vacancies

When a convention has made a nomina-

CHAPTER 34

POLITICAL PARTIES, COMMITTEEMEN AND COMMITTEES

Section

- 23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket.
- 23-3402. Committeemen as party representative—county and city central committees—term—vacancy.
- 23-3403. Committees' powers—state central committee to appoint county central committee where none exists.
- 23-3404. Committees to fill vacancies among nominees under certain circumstances.
- 23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention.
- 23-3406. Powers of parties.
- 23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors.

23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket. (1) Each political party shall elect at each primary election one (1) man and one (1) woman who shall serve as committeemen for each election precinct. The committeemen shall be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party shall be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner as he does for other candidates.

History: En. Sec. 72, Ch. 368, L. 1969.

23-3402. Committeemen as party representative—county and city central committees—term—vacancy. (1) Each committeeman shall represent his political party for the precinct in all ward or subdivision committees formed.

(2) The committeemen in each precinct shall constitute the county central committee of the respective political parties.

(3) Committeemen who reside within the limits of a city are ex officio the city central committee of their respective political parties and

have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committeeman has a term of two (2) years from the date of his election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.

History: En. Sec. 73, Ch. 368, L. 1969.

23-3403. Committees' powers—state central committee to appoint county central committee where none exists. (1) The county and city central committee may:

(a) Make rules for the government of its political party in each county, not inconsistent with any of the provisions of this act nor the rules of its state political party;

(b) Elect two (2) county members of the state central committee, one (1) shall be a man and one (1) shall be a woman; elect the members of the congressional committee; and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

History: En. Sec. 74, Ch. 368, L. 1969.

23-3404. Committees to fill vacancies among nominees under certain circumstances. County and city central committees may make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary election if the vacancy is caused by death, resignation, or removal from the electoral district but not otherwise.

History: En. Sec. 75, Ch. 368, L. 1969.

Write-in Candidate

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election

day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill. State ex rel. Wilkinson v. McGrath, 111 M 102, 106 P 2d 186.

DECISIONS UNDER FORMER LAW

Death after Election

Former law did not empower county central committee to make an original nomination of a candidate to an office to be filled at a special election, where the

officer-elect died after election and before induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention. (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one (1) or more vice-chairmen. The chairman or first vice-chairman shall be a woman. They shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise any and all powers conferred upon the county, city, state, and congressional central committees by this act.

(3) The chairman of the county central committee shall call the central committee meeting and not less than four (4) days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call, enclosing a blank proxy, to each precinct committeeman. No proxy shall be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman and the appointed proxy are absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates.

History: En. Sec. 76, Ch. 368, L. 1969.

23-3406. Powers of parties. (1) Each political party shall have power to:

- (a) Make its own rules and regulations;
- (b) Provide for and select its own offices;
- (c) Call conventions and provide for the number and qualification of delegates;
- (d) Adopt platforms;
- (e) Provide for selection of delegates to national conventions;
- (f) Provide for the nomination of presidential electors;
- (g) Provide for the selection of national committeemen and women;
- (h) Make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one (1) county where such vacancies are caused by death, resignation or removal from the electoral district;
- (i) Perform all other functions inherent in such an organization.

History: En. Sec. 81, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors. (1) Except as provided in subsection (2) of this section, expenses of county and state conventions shall be paid by the political parties.

(2) Elected delegates and alternates attending state conventions to nominate presidential electors shall be paid eight cents (\$.08) per mile for travel to and from the convention paid from the county general fund.

History: En. Sec. 83, Ch. 368, L. 1969.

CHAPTER 35

ELECTION SUPPLIES AND BALLOTS

Section

- 23-3501. Items to be furnished by commissioners.
- 23-3502. City clerk to act in city elections.
- 23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls.
- 23-3504. Forms for election returns.
- 23-3505. Completion and posting of forms.
- 23-3506. Registrar to provide printed ballots—marking by electors—other ballots ineffective.
- 23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk.
- 23-3508. Printing and distribution of ballots at public expense—uniformity.
- 23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party.
- 23-3510. Pastors to be printed and distributed where vacancy has been filled—election judges to affix.
- 23-3511. Arrangement of names—rotation on ballot.
- 23-3512. Columns and material to be printed on ballot.
- 23-3513. Order of placement.
- 23-3514. Blank space and margin.
- 23-3515. Stub, size and contents.
- 23-3516. Number of ballots to be provided for each precinct.
- 23-3517. Short-term and long-term elections for same office—order of offices on ballot.

23-3501. Items to be furnished by commissioners. The commissioners shall:

- (1) Furnish pollbooks to each election precinct in a form prescribed by the secretary of state;
- (2) Furnish printed blanks for precinct registers, pollbooks, tally sheets, lists of electors, tickets, and returns, together with envelopes in which to enclose the returns;
- (3) Furnish for each polling precinct a ballot box or canvas pouch with a lock and key for the ballots and detached stubs.

History: En. Sec. 84, Ch. 368, L. 1969.

Cross-Reference

County commissioners to furnish pollbooks, sec. 16-1156.

23-3502. City clerk to act in city elections. In city elections, the city clerk shall perform all duties prescribed for registrars in this chapter.

History: En. Sec. 85, Ch. 368, L. 1969.

23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls. Before the opening of the polls, the registrars or city clerks shall:

- (1) Deliver the election ballots to the judges of election in each polling place;
- (2) Deliver a rubber stamp which contains the words "Official Ballot," the name or number of the election precinct, the name of the county, the date of the election, and the name and official designation of the clerk who furnished the ballots.

History: En. Sec. 86, Ch. 368, L. 1969.

23-3504. Forms for election returns. In sending out election supplies to each precinct, the registrars shall send six (6) or more printed forms

with a return envelope to the election judges to be used in sending election returns for public information. The forms shall be in ballot form and have printed on them the names of each candidate and each proposition.

History: En. Sec. 87, Ch. 368, L. 1969.

Transmitting Forms

Forms on which judges of election must summarize the result of the vote are not

a part of the election returns and are not required to be transmitted to the clerk in sealed packages. *Dubie v. Batani*, 97 M 468, 478, 37 P 2d 662.

23-3505. Completion and posting of forms. (1) Immediately after all the ballots are voted in each precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the blanks furnished by the registrars in the preceding section.

(2) The election judges shall immediately post one of the blanks at the polling place, and send a copy by mail to the registrar.

History: En. Sec. 88, Ch. 368, L. 1969.

23-3506. Registrar to provide printed ballots—marking by electors—other ballots ineffective. Except as otherwise provided in this act:

(1) The registrar shall provide printed ballots for every election for public officers. He shall print on the ballot the names of all candidates, including candidates for chief justice and associate justices of the supreme court, and judges of the district courts;

(2) An elector may write or paste on his ballot the name of any person for whom he desires to vote for any office, but must mark it as provided in section 23-3606. When the ballot is marked in this manner it must be counted the same as though the name is printed upon the ballot and marked by the voter;

(3) Ballots other than those printed by the registrars may not be cast or counted in any election.

History: En. Sec. 89, Ch. 368, L. 1969.

Cross-References

Constitutional amendments, separate ballot prohibited, sec. 37-105.

Initiative and referendum, ballot, sec. 37-107.

Separate ballot for bonds and levies, sec. 37-107.

Use of Uniform Ballot Required

By statute a uniform ballot has been adopted, to be printed and distributed at public expense, and no others than those so provided can be cast or counted. *Harrington v. Crichton*, 53 M 388, 391, 164 P 537.

23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk. (1) When the secretary of state has certified to the registrar any question to be submitted to a vote of the people, the registrar must print the ballot in a form which will enable the electors to vote upon the question presented as provided by law.

(2) The registrar must prepare the necessary ballots whenever any question is to be submitted to the electors of any locality, or of the state generally. However, for questions submitted to the electors of a city alone, the city clerk shall prepare the necessary ballot.

History: En. Sec. 90, Ch. 368, L. 1969.

23-3508. Printing and distribution of ballots at public expense—uniformity. (1) All ballots cast for public officers within the state, except school district officers, must be printed and distributed at public expense.

(2) The county shall pay for the printing of ballots and cards of instruction for elections in each county.

(3) The expense of printing and delivering ballots in city elections is a charge upon the city in which the election is held.

(4) All official ballots must be uniform in size and printing. This involves:

(a) Uniformity in the type of ink used, which must be black, size of paper, type of white paper and arrangement of the paper, and the names of candidates printed upon the ballots shall be in type of the same size and character;

(b) When the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot;

(c) The ballots must contain the name of every candidate whose nomination is certified under law for a special office and no other names except that the names of candidates for president and vice-president of the United States shall appear on the ballot as provided in section 23-4301.

History: En. Sec. 91, Ch. 368, L. 1969.

23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party. (1) Candidates' names shall be printed in one place on the ballot with the name of the party or political organization, as found in the certificate of nomination in not more than three (3) words, printed opposite the name.

(2) The names of candidates for chief justice, associate justices, and district court judges shall be followed by: "Nominated without party designation."

(3) If a person is nominated for the same office by more than one (1) party, he shall file a written election with the officer with whom he filed his declaration of nomination in the time required to file the declaration. If he fails or neglects to file an election, his name shall appear under the party with whom his nominating declaration was first filed.

History: En. Sec. 92, Ch. 368, L. 1969; amd. Sec. 2, Ch. 254, L. 1971.

Amendments

The 1971 amendment substituted "his

name shall appear under the party with whom his nominating declaration was first filed" for "no party designation shall be placed opposite his name" at the end of the second sentence of subsection (3).

23-3510. Pastors to be printed and distributed where vacancy has been filled—election judges to affix. (1) If a vacancy occurs after the printing of the ballots but before election, and a person is nominated to fill the vacancy, the officer whose duty it is to have the ballots printed must print pastors containing the name of the new nominee and mail them to the election judges by registered letter.

(2) The election judges shall affix the pastors over the substituted name in the proper place on each ballot before it is given to the elector.

History: En. Sec. 93, Ch. 368, L. 1969.

23-3511. Arrangement of names—rotation on ballot. (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the appropriate title of the respective offices.

(2) The candidates of the two (2) major parties shall appear on the ballot before and above candidates of minor parties and independent candidates.

(3) The parties whose candidates for governor, except independent candidates, received the highest number of votes at the next preceding four (4) general elections shall constitute the two (2) major political parties.

(4) If there is a tie in the number of first or second place votes, the determination shall be made by going back to enough preceding elections to break the tie and no further.

(5) All other candidates shall be designated as either independent candidates or as belonging to minor parties.

(6) If two (2) or more persons are candidates for election to the same office, the registrar shall divide the ballot forms into sets to provide a substantial rotation of the names of candidates as follows:

(a) He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for any office;

(b) He shall arrange the sets so that the names of the candidates beginning with a form arranged in alphabetical order, are rotated by removing one (1) name from the top of the list for each office and placing the name or number at the bottom of the list for each successive set of ballot forms;

(c) For the purposes of rotation, the office of president and vice-president shall be considered as a group;

(d) No more than one (1) of the sets shall be used in printing the ballot for use in any one (1) precinct, and all ballots furnished for use in any precinct shall be identical;

(e) Candidates of the two (2) major parties shall be rotated so they appear on the ballot before and above any candidates of the minor parties or independent candidates.

History: En. Sec. 94, Ch. 368, L. 1969.

23-3512. Columns and material to be printed on ballot. (1) Each ballot shall contain three (3) categories with at least one (1) column for each category.

(2) At the head of the first column to the left shall be the words, "STATE AND NATIONAL," in boldface type, followed by a list of all candidates for state and national offices, including supreme court justices, district court judges, and members of the legislative assembly, and the list shall progressively continue to the top of the second column.

(3) Next shall be the words "COUNTY AND TOWNSHIP," in large boldface type and beneath the heading all candidates for county and township offices. The list shall progressively continue on to the top of the third column.

(4) Next shall be the words "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS," in boldface type, and listed there-

under shall be all proposed constitutional amendments and measures to be voted which do not involve the creation of any state levy, debt, or liability. If there are no such measures, this heading shall be eliminated.

(5) Following each except the last column, the words "VOTE IN THE NEXT COLUMN" shall appear.

(6) All measures involving the creation of a state levy, debt, or liability shall be submitted to the voters upon a separate official ballot.

(7) Each ballot shall be printed so that all the matters printed are equally apportioned among the three (3) categories as nearly as possible.

History: En. Sec. 95, Ch. 368, L. 1969.

23-3513. Order of placement. (1) The order of offices on the ballot in the first column designated "STATE AND NATIONAL," shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line, shall be the names and spaces for voting for candidates for president and vice-president. The names of candidates for president and vice-president for each political party shall be grouped together.

- (b) United States senator;
- (c) United States representative;
- (d) Governor;
- (e) Lieutenant governor;
- (f) Secretary of state;
- (g) Attorney general;
- (h) State treasurer;
- (i) State auditor;
- (j) Railroad and public service commissioners;
- (k) State superintendent of public instruction;
- (l) Clerk of the supreme court;
- (m) Chief justice of the supreme court;
- (n) Associate justices of the supreme court;
- (o) District court judges;
- (p) State senators, members of the house of representatives.

If any offices are not to be elected, they shall not be designated but the order of offices to be filled shall maintain their relative positions.

(2) In the column designated, "COUNTY AND TOWNSHIP," the following order of placement shall be observed:

- (a) Clerk of the district court;
- (b) County commissioner;
- (c) County clerk and recorder;
- (d) Sheriff;
- (e) County attorney;
- (f) County auditor;
- (g) Other offices in the order designated by the registrar.

(3) In the third column constitutional amendments shall be followed by referendum and initiative measures.

History: En. Sec. 96, Ch. 368, L. 1969.

23-3514. Blank space and margin. (1) Below the names of candidates for each office there must be enough blank spaces to contain as many written names of candidates as there are persons to be elected.

(2) There must be a margin on each side of at least one-half ($\frac{1}{2}$) inch in width, and a reasonable space between the names, so that the voter may clearly indicate the candidate for whom he wishes to cast his ballot.

History: En. Sec. 97, Ch. 368, L. 1969.

23-3515. Stub, size and contents. (1) The ballot shall be printed on the same leaf with a stub, and separated by a perforated stub.

(2) The stub shall extend the entire width of the ballot, and have instructions printed on it.

(3) Upon the face of the stub shall be printed, in type called brevier capitals, the following:

(a) "This ballot should be marked with an 'X' in the square before the names of each person or candidate for whom the elector intends to vote. The elector may write in blank spaces, or paste over another name, the name of a person for whom he wishes to vote, and vote by marking an 'X' in the square before the name."

(b) "If a ballot contains a constitutional amendment, or other question to be submitted to a vote of the people, it is voted on by marking an 'X' in the square before the amendment or question."

(4) On the back of the stub shall be printed or stamped by the registrar or other officer, the consecutive number of the ballot, beginning with number one (1) and increasing in regular numerical order to the total number of ballots required for the precinct.

History: En. Sec. 98, Ch. 368, L. 1969.

23-3516. Number of ballots to be provided for each precinct. (1) The registrar must provide each election precinct with sufficient ballots for the electors registered plus sufficient copies to cover destroyed ballots.

(2) The registrar shall keep a record in his office, showing the exact number of ballots that are delivered to the election judges of each precinct.

(3) In city elections the city clerk shall provide necessary ballots.

History: En. Sec. 99, Ch. 368, L. 1969.

23-3517. Short-term and long-term elections for same office—order of offices on ballot. (1) If there is a short-term and a long-term election for the same office, the long-term office shall precede the short-term.

(2) Above each group of candidates for each office shall be printed the words designating the particular office in boldface capital letters and directly underneath the words, "VOTE FOR," followed by the number to be elected to such office.

(3) The ballot shall be in a form prescribed by the secretary of state.

History: En. Sec. 100, Ch. 368, L. 1969.

CHAPTER 36

CONDUCT OF ELECTIONS—THE POLLS—VOTING AND BALLOTS

- Section
 23-3601. Instruction cards, printing, distribution, posting and contents of—display of official ballots.
 23-3602. Proclamation prior to opening and closing polls.
 23-3603. Delivery of official ballots to elector.
 23-3604. Sufficient booths to be provided—only one person to occupy booth—may be ejected after occupying booth for unreasonable time.
 23-3605. Prohibited conduct.
 23-3606. Method of voting.
 23-3607. No person except election judge to put ballot or other object in a ballot box—penalty.
 23-3608. Putting ballot in box.
 23-3609. Judges may aid disabled elector.
 23-3610. Marking precinct register book before elector votes—procedure.
 23-3611. Grounds of challenge.
 23-3612. Proceedings on challenges for want of identity, having voted before, and conviction of felony.
 23-3613. Challenges, how determined.
 23-3614. If a person refuses to be sworn, vote to be rejected.
 23-3615. Trial of challenges.
 23-3616. Proceedings upon determination of challenges.
 23-3617. List of challenges to be kept.
 23-3618. Poll watchers—announcement of voter's name.

23-3601. Instruction cards, printing, distribution, posting and contents of—display of official ballots. (1) The registrar shall print on cards instructions to electors on how to vote.

(2) He shall furnish six (6) cards to the election judges in each precinct and one (1) additional card for each fifty (50) registered electors or fractional part of fifty (50) at the same time ballots are furnished.

(3) The election judges shall post at least one (1) card in each compartment provided for the preparation of ballots, and not less than three (3) of the cards elsewhere about the polling place.

(4) The cards shall contain instructions in bold large type:

- (a) On how to obtain ballots for voting;
- (b) On how to prepare ballots for deposit in the ballot box;
- (c) On how to obtain a new ballot in place of one spoiled by accident;
- (d) A copy of sections 94-1407, 94-1411, 94-1412, 94-1413, 94-1414, and 94-1415, R. C. M. 1947.

(5) Official ballots provided for in chapter 35 of this act shall be posted in each booth or compartment and in three (3) conspicuous places about the polling place.

History: En. Sec. 101, Ch. 368, L. 1969. enee to "chapter 35" for a reference to "chapter 6" in subsection (5).

Compiler's Notes

The compiler has substituted the refer-

23-3602. Proclamation prior to opening and closing polls. Before the polls are opened or closed that fact must be proclaimed at the place of election.

History: En. Sec. 102, Ch. 368, L. 1969.

23-3603. Delivery of official ballots to elector. (1) The election judges must designate two (2) of their number to deliver ballots to electors.

(2) Before delivery, the election judges shall stamp the words "official ballot" on the back and near the top of the ballot. They shall also stamp other words required by section 23-3503.

(3) The election clerks shall enter on the poll lists the name of the elector and the number of the stub attached to the ballot given him.

(4) Each elector shall receive one (1) ballot from the election judges.

History: En. Sec. 103, Ch. 368, L. 1969.

Stamping of Official Ballot

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, al-

though in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub—thus leaving the ballot without the stamp—did not render the ballot void. *Harrington v. Crichton*, 53 M 388, 164 P 537.

23-3604. Sufficient booths to be provided—only one person to occupy booth—may be ejected after occupying booth for unreasonable time. (1) All officers who designate polling places shall:

(a) Provide in each polling place a sufficient number of booths. The officers must furnish each booth with a door or curtain to screen the voter from observation;

(b) Furnish the booths adequately to enable the elector to prepare his ballot;

(c) Furnish at least one (1) booth for every fifty (50) electors registered in the precinct.

(2) No more than one (1) person may occupy a booth at one (1) time, and no person may occupy a booth longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

History: En. Sec. 104, Ch. 368, L. 1969.

23-3605. Prohibited conduct. (1) An election officer shall not do any electioneering on election day.

(2) A person shall not do any electioneering on election day, within any polling place, in any building in which an election is being held, or within two hundred (200) feet of the building where the polling place is located.

(3) A person shall not obstruct the entries to a polling place.

(4) An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, and arrest any person obstructing the passageway to a polling place.

(5) A person shall not remove a ballot from the polling place before the closing of the polls.

(6) A person shall not show the contents of his ballot to any other person after it is marked.

(7) A person shall not solicit the elector to show the contents of his ballot; nor shall any person, except the election judge, receive from any elector a ballot prepared for voting.

(8) An elector shall not receive a ballot from any other person than one of the election judges, nor shall any person other than an election judge deliver a ballot to an elector.

(9) An elector shall not vote any ballot except one received from the election judges.

(10) An elector shall not place any mark upon his ballot by which it may be identified as the one voted by him.

(11) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to the election judges.

History: En. Sec. 105, Ch. 368, L. 1969.

Electioneering by election officials, penalty, 94-1413.

Cross-References

Disclosing contents of ballot after marking, penalty, 94-1414.

Solicitation of votes on election day, sec. 94-1453.

23-3606. Method of voting. (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "X" in the square before the name of the person or persons for whom he intends to vote.

(3) If the ballot contains a constitutional amendment, or other question to be submitted to the vote of the people, he shall mark an "X" in the applicable square indicating his vote either for or against the amendment or question.

(4) The elector may write in the blank spaces, or paste over any other name, the name of any person for whom he wishes to vote, and vote for that person by marking an "X" before the name.

(5) After preparing his ballot the elector must fold it so the face of the ballot will be concealed and the endorsements may be seen, and hand it to the election judges who shall announce the name of the elector and the printed or stamped number on the stub in a loud tone of voice. The judge must announce the voter's name and record the name in the pollbook. If the voting is in a city, the voter's residence shall also be announced and recorded in the pollbook.

(6) If the elector is entitled to vote, and if the printed or stamped number is the same as that entered on the pollbooks as the number on the stub, the judge shall receive the ballot, and remove the stub in sight of the elector depositing each ballot in the ballot box and each stub in a box for detached ballot stubs.

(7) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it.

History: En. Sec. 106, Ch. 368, L. 1969.

voter is not to be disfranchised by the errors or wrongful acts of election officers. *Carwile v. Jones*, 38 M 590, 599, 101 P 153.

Deposit of Ballot

Act of voting is not completed until the ballot is deposited in the ballot box. *Goodell v. Judith Basin County*, 70 M 222, 233, 224 P 1110.

Error by Election Officer

A ballot properly marked, but from which the stub has not been detached by the ballot judge, should be counted; a

Marking of Ballot

In an election contest, the court properly refused to count for a candidate ballots marked as follows: (1) Where the cross was placed after the candidate's name and entirely without his party column; (2) where perpendicular lines were

drawn through the names in one party column, but no cross was placed before the candidate's name; and (3) where his name was written in one party column, but no cross marked in the square before the name. In neither instance was there substantial, nor any, compliance with the provisions of predecessor section. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

In an election contest, the court properly refused to count a ballot for a candidate which was marked by crossing out all the names in other party columns, but which failed to show an "X" before his name. While the intention of the voter is generally a very material consideration, he must express his intention substantially as indicated by the statute. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

Where the crossmark was placed after the candidate's name but within his party column, the ballot was void, since the elector did not substantially comply with the requirement of prior section relative to placing the mark before the name. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

Any mark within the square before the candidate's name, which can be said to be a crossing of two lines, will answer the requirements of the statute that the elector must place an "X" in such square; and in the absence of anything to indicate a purpose on his part to identify his ballot by the use of a third line within

the square, a defect in the mark is not sufficient to vitiate the ballot. *Carwile v. Jones*, 38 M 590, 595, 101 P 153, explained in 109 M 390, 393, 396, 96 P 2d 922.

Statutory provision that a ballot should be marked by an "X" in the square is directory and not mandatory, and in the absence of a further provision that unless so marked the ballot shall not be counted, a ballot upon which the elector marked all squares with a check mark (✓) instead of an "X" should have been counted for contestant, there being nothing to indicate an attempt to mark the ballot for identification purposes. *Peterson v. Billings*, 109 M 390, 395, 96 P 2d 922.

Voting an Affirmative Act

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under section 2, article IX of the constitution, a voter may cast his ballot. *State ex rel. Wolff v. Geurkink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-3607. No person except election judge to put ballot or other object in a ballot box—penalty. No person, except an election judge shall put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box. A person violating this section is guilty of a misdemeanor. An election judge who knowingly permits a violation of this act is guilty of a felony.

History: En. Sec. 107, Ch. 368, L. 1969.

23-3608. Putting ballot in box. If the name of an elector appears in the official register of the precinct, or if the person offering to vote produces a proper registry certificate and his vote is not rejected upon a challenge, the election judge must immediately and publicly in the presence of all the judges, place the ballot in the ballot box without opening or examining it.

History: En. Sec. 108, Ch. 368, L. 1969.

23-3609. Judges may aid disabled elector. (1) The election judges shall aid an elector, who because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The elector shall be assisted by two (2) judges who represent different parties. The disabled elector may request that a qualified elector he designates also aid him in voting. The election judges must certify on the official

register opposite the disabled elector's name that the ballot was marked with their assistance and the name of any other elector designated. Neither the judges nor a person who aided the elector may reveal information regarding the ballot.

(3) The election judges shall require the declaration of disability by the elector under oath. They are authorized to administer the oath.

(4) No elector, other than the one who is unable to vote, may divulge to anyone within the polling place the name of any candidate for whom he intends to vote, or ask or receive the assistance of any person within the polling place in the preparation of his ballot.

(5) Instead of assistance, as provided in subsection (2) of this section, the elector may request the assistance of any qualified elector whom he designates to the judges to aid him in the marking of his ballot, and the judges must certify on the official register opposite the name of such disabled elector that it was so marked with their assistance.

History: En. Sec. 109, Ch. 368, L. 1969.

Evidence

Where it appeared in an election contest that a voter's ballot had been endorsed by the judges of election, as required by law, it was necessary to show that it could not thereby be identified, in order to let in, as secondary evidence, testimony as to how he voted. *Lane v. Bailey*, 29 M 548, 560, 75 P 191.

Need Not Certify Reason for Assistance

A ballot bearing the endorsement:

"Voted by H. and M. (judges election) for illegibility of voter," was not void on the ground that the reason given for assisting the voter was not one recognized by law, since section does not require the judges to certify the reason for assisting an elector, and the words "for illegibility of voter" were therefore surplusage; and in the absence of a showing why they gave assistance, it will be presumed that they regularly performed their official duties. *Carwile v. Jones*, 38 M 590, 599, 101 P 153.

23-3610. Marking precinct register book before elector votes—procedure. (1) The election judges at every primary, general or special election shall, in the precinct register book, mark a cross (X) upon the line opposite to the name of the elector.

(2) Before an elector is permitted to vote, the election judges shall require the elector to sign his name on the place designated in the precinct register.

(3) The election judges shall require an elector not able to sign his name to produce two (2) electors who shall make an affidavit before the election judges, or one (1) of them, in a form prescribed by the secretary of state.

(4) The affidavit shall be filed by the election judges, and returned to the registrar with the returns of the election. One (1) of the judges shall write the elector's name, note the fact of his inability to sign, and the names of the two (2) electors.

(5) If the elector fails or refuses to sign his name, and if unable to write fails to procure two (2) electors who will take the oath required, he shall not be allowed to vote.

(6) Immediately after the canvass of the returns, the election judges shall deliver to the registrar the official register, sealed, with the election returns and pollbook which have been used for the election.

(7) Each precinct shall keep a list of persons voting, and the name of each person who votes shall be entered in it and numbered in the order voting. This list is known as the pollbook.

History: En. Sec. 110, Ch. 368, L. 1969;
amd. Sec. 3, Ch. 254, L. 1971.

Amendments

The 1971 amendment inserted "primary" in subsection (1).

23-3611. Grounds of challenge. A person offering to vote may be orally challenged by any elector of the county, upon the following grounds:

(1) That he is not the person whose name appears on the register or checklist;

(2) That he has been adjudicated insane or is confined to a state institution;

(3) That he has voted before that day;

(4) That he has been convicted of a felony and has not been pardoned.

History: En. Sec. 111, Ch. 368, L. 1969.

Cross-References

Challenges at nominating elections, sec. 94-1446.

23-3612. Proceedings on challenges for want of identity, having voted before, and conviction of felony. (1) If the challenge is on the ground that the person is not the person whose name appears on the official register, the election judges shall administer the following oath: "You do swear (or affirm) that you are the person whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the person has voted before that day, the judges shall administer this oath: "You do swear (or affirm) that you have not before voted this day."

(3) If the challenge is on the ground that the person has been convicted of a felony, the judges shall administer the following oath: "You do swear (or affirm) that you have not been convicted of a felony."

History: En. Sec. 112, Ch. 368, L. 1969.

23-3613. Challenges, how determined. (1) Challenges on the grounds that the person is not the person whose name appears on the official register or that the person has before voted that day are determined in favor of the person challenged by his taking the oath tendered.

(2) A challenge that the person has been convicted of a felony and not pardoned must be determined in favor of the challenged on his taking the oath tendered, unless the conviction is proved by producing an authenticated copy of the record, or by oral testimony of two (2) witnesses.

(a) If a person convicted of a felony states he was pardoned, he must exhibit his pardon or certified copy to the election judges.

(b) If the pardon is found sufficient, the election judges shall administer this oath: "You do swear (or affirm) that you have not been convicted of any felony other than that for which a pardon is now exhibited."

(c) After taking the oath, the person must be allowed to vote if otherwise qualified, unless a conviction of some other felony is proved.

History: En. Sec. 113, Ch. 368, L. 1969.

23-3614. If a person refuses to be sworn, vote to be rejected. If a person challenged refuses to take the oath tendered, or refuses to be sworn and to answer the questions touching the matter of residence, he shall not be allowed to vote.

History: En. Sec. 114, Ch. 368, L. 1969.

23-3615. Trial of challenges. Challenges for causes other than those specified in this chapter must be tried and determined by the election judges at the time of the challenge.

History: En. Sec. 115, Ch. 368, L. 1969.

23-3616. Proceedings upon determination of challenges. If the challenge is determined against the person offering to vote, the ballot shall, without examination, be destroyed by the election judges in the presence of the person offering the challenge. If determined in his favor, the ballot must be deposited in the ballot box.

History: En. Sec. 116, Ch. 368, L. 1969.

23-3617. List of challenges to be kept. The election judges shall require each election clerk to keep a list showing:

- (1) The names of all persons challenged;
- (2) The grounds of each challenge;
- (3) The determination of the election judges upon the challenge.

History: En. Sec. 117, Ch. 368, L. 1969.

23-3618. Poll watchers—announcement of voter's name. The election judges shall permit one (1) poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with election procedures. At the time that each elector signs his name, one (1) of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote-counting procedures of the judges and all entries of the results of the elections.

History: En. Sec. 118, Ch. 368, L. 1969.

CHAPTER 37

ABSENTEE VOTING AND REGISTRATION

- Section
- 23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls.
- 23-3702. Forms and rules for absentee voting in school district elections.
- 23-3703. Application of absentee or physically incapacitated person for ballot.
- 23-3704. Form of application—affidavit—manner.
- 23-3705. Transmission of application to registrar—delivery of ballot.
- 23-3706. Mailing ballot to elector—affidavit—electors in the United States service.
- 23-3707. Marking and swearing to ballot by elector.
- 23-3708. Disposition of marked ballot upon receipt by registrar or clerk.
- 23-3709. Delivery of ballots to election judges—ballots to be rejected—ballots not to count.
- 23-3710. Registrar or clerk to keep record of ballots and issue certificate.

- 23-3711. Duty of election judges—pollbooks, numbering ballots and rejected ballots.
- 23-3712. Voting before election day by prospective absentee or physically incapacitated elector.
- 23-3713. Envelopes containing ballots—deposit in box and rejection of ballot.
- 23-3714. Elector whose absentee ballot has been rejected as defective may vote in person.
- 23-3715. Opening of envelopes after deposit.
- 23-3716. Voting machines—canvass of votes.
- 23-3717. False swearing perjury—official misconduct a misdemeanor.
- 23-3718. “Elector in the United States service” defined.
- 23-3719. Registration of absent electors in United States service.
- 23-3720. Oath for elector in United States service.
- 23-3721. Classification of federal post card application.
- 23-3722. Method of registration of voter absent from county.
- 23-3723. Registration card mailed upon application.
- 23-3724. Registration of electors whose United States service or employment has terminated.

23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls. A qualified registered elector who will be absent from the county or physically incapacitated and unable to go to the polls on the day of election may vote as provided in sections 23-3701 through 23-3723.

History: En. Sec. 119, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Constitutionality

Prior Absent Voters Law was valid enactment and did not violate section 2, article IX of the state constitution, which provides that an elector “shall have re-

sided in the state one year immediately preceding this election at which he offers to vote.” *Goodell v. Judith Basin County*, 70 M 222, 227, 224 P 1110.

23-3702. Forms and rules for absentee voting in school district elections. The state superintendent of public instruction shall prepare the form of application for absentee ballots and other forms necessary for school district elections and may make necessary rules to carry out the purpose of this chapter as it pertains to school districts.

History: En. Sec. 120, Ch. 368, L. 1969.

23-3703. Application of absentee or physically incapacitated person for ballot. During a period beginning forty-five (45) days before the day of an election and ending at 12 noon on the day before the election, an elector expecting to be absent from the county in which his voting precinct is situated, an elector in United States service, or an elector who will be unable to go to the polls because of physical incapacity may apply to the registrar or city clerk for an absentee ballot.

History: En. Sec. 121, Ch. 368, L. 1969.

23-3704. Form of application — affidavit — manner. (1) Application for absentee ballots shall be made on a form furnished by the registrar of the county of which the applicant is an elector, the city clerk, or clerk of a first class school district. The form shall be prescribed by the secretary of state except as provided in section 23-3702.

(2) The applicant shall subscribe the application and swear to it before an officer authorized to administer oaths. The application is not complete without this affidavit.

(3) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant, addressed to the registrar of the applicant's residence.

History: En. Sec. 122, Ch. 368, L. 1969.

23-3705. Transmission of application to registrar—delivery of ballot.

(1) The elector shall forward the application by mail or deliver it in person to the registrar.

(2) The registrar shall compare the signature on the application with the applicant's signature on the registration card. If convinced the person making the application is the same as the one whose name appears on the registration card, he shall deliver the ballot.

History: En. Sec. 123, Ch. 368, L. 1969.

23-3706. Mailing ballot to elector—affidavit—electors in the United States service. (1) Either upon receipt of the application or immediately after the official ballot for the precinct of the applicant's residence has been printed, the registrar, city clerk, or clerk of a first class school district shall send by mail, postage prepaid, whatever official ballots are necessary.

(2) The proper officer shall enclose an envelope with the ballots which has written on the front the name, title, and post-office address of the officer sending it, and upon the other side a printed affidavit in a form prescribed by the secretary of state.

(3) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face two parallel horizontal red bars, each one-quarter ($\frac{1}{4}$) inch wide, extending from one side of the envelope to the other, with an intervening space of one-quarter ($\frac{1}{4}$) inch, with the words "Official Election Ballot Material—via Air Mail," between the bars. In the upper right-hand corner shall be printed "Free of U.S. Postage." In the upper left-hand corner shall be blanks sufficient for the recipient to place his return address. All printing on the face of the envelope shall be in red. The gummed flap of the envelope supplied for the return of the ballot shall be separated by wax paper or other appropriate protective insert. Voting instructions provided in subparagraph (5) of this section shall include a procedure to be followed by absentee voters, such as notation of the facts on the back of the envelope duly signed by the voter and witnessing officer, in instances of adhesion of the balloting material.

(4) The return address shall be self-addressed to the registrar or city clerk.

(5) Instructions for voting shall be enclosed with the ballots for electors in the United States service. Instructions shall include information concerning the type or types of writing instruments which may be used to mark the absentee ballot.

History: En. Sec. 124, Ch. 368, L. 1969; added the second sentence to subsection amd. Sec. 1, Ch. 246, L. 1971.

(5).

Amendments

The 1971 amendment added the fifth and sixth sentences to subsection (3); and

Improper Delivery

Absent voter's ballot delivered by county clerk not to electors personally or by

mail, but to one engaged in procuring electors to apply therefor and request that such ballots be delivered to such person,

were void and could not be voted at ensuing election. State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 895.

23-3707. Marking and swearing to ballot by elector. (1) The elector shall complete the affidavit before an officer authorized by law at the place of execution to administer oaths.

(2) The elector shall mark each ballot in the presence of the officer only, in a manner so the officer cannot see the vote.

(3) The ballot shall be folded by the elector to conceal the vote in the presence of the officer and the elector shall, in the officer's presence, place it in the envelope and seal it.

(4) The officer shall sign at the end of the certificate and affidavit.

(5) The elector shall mail the envelope, postage prepaid, or deliver it to the registrar, city clerk, or clerk of a first class school district.

History: En. Sec. 125, Ch. 368, L. 1969.

23-3708. Disposition of marked ballot upon receipt by registrar or clerk.

(1) Upon receipt of the envelope, the registrar, city clerk, or clerk of a first class school district shall immediately enclose it in a larger envelope, together with the elector's application and seal it.

(2) The registrar, city clerk, or clerk of a first class school district shall safely keep it in his office until delivered or mailed by him.

History: En. Sec. 126, Ch. 368, L. 1969.

23-3709. Delivery of ballots to election judges—ballots to be rejected—ballots not to count. (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the registrar or clerk shall deliver the larger envelope to the judges at the same time the ballots are delivered.

(2) If absentee ballots are received after the ballots are delivered to the election judges, but prior to the close of the polls, the registrar or clerk shall immediately deliver the larger envelopes to the judges.

(3) If absentee ballots are received by the registrar or clerk for which application was not received prior to twelve (12) noon on the day preceding an election, or received after the close of the polls, the clerk shall endorse upon the voter's envelope the date and exact time of receipt and the words "To be rejected." Absentee ballots so endorsed shall be delivered to the election judges of the precinct or retained by the registrar or clerk if the judges have adjourned and shall be rejected.

(4) If an elector votes absentee ballot and dies between the time of balloting and election day, his ballot will not count.

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971.

Amendments

The 1971 amendment inserted "but prior to the close of the polls" in subsection (2); deleted "by mail postage prepaid" after "larger envelopes" in subsection (2); in-

serted "or received after the close of the polls" in the first sentence of subsection (3); inserted "or retained by the registrar or clerk if the judges have adjourned" in the second sentence of subsection (3); and made minor changes in phraseology and style.

23-3710. Registrar or clerk to keep record of ballots and issue certificate. (1) The absentee ballots delivered shall be regular official ballots

beginning with ballot number one (1) and following consecutively, according to the number of applications for absentee ballots.

(2) The registrar, city clerk, or school district clerk shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The registrar, city clerk, or school district clerk shall deliver to the election judges to whom the ballots are delivered a certificate stating the number of absentee ballots delivered as well as those marked before him, and the names of the voters to whom such ballots are delivered, or by whom they have been marked if marked before him.

History: En. Sec. 128, Ch. 368, L. 1969.

23-3711. Duty of election judges—pollbooks, numbering ballots and rejected ballots. (1) The election judges, at the opening of the polls, shall note on the pollbooks opposite the numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent or physically incapacitated voters. The notation may be made by writing the words "absent or physically incapacitated voters" opposite the numbers.

(2) The election judges shall insert only the names of the elector entitled to each particular number according to the certificate of the registrar or city clerk and the number of his ballot.

(3) Any absentee ballots which have been rejected shall be placed with the voter's application and the absent or physically incapacitated voter's envelope furnished by the registrar or city clerk.

(a) This envelope shall be sealed and endorsed by the words, "rejected absentee ballots," numbered, and shall put on it the number of the absentee ballots given according to the registrar's or city clerk's certificates.

(b) There shall be a separate enclosing envelope for the absentee ballots rejected, and the envelopes shall be placed in an envelope together with other ballots, and shall not be opened without a court order.

History: En. Sec. 129, Ch. 368, L. 1969.

23-3712. Voting before election day by prospective absentee or physically incapacitated elector. (1) An elector who is present in his county after the official ballots of his county or school district have been printed who has reason to believe that he will be absent from the county or school district or physically incapacitated on election day, may vote before election day before the registrar, city clerk, or school district clerk, or some officer authorized to administer oaths and having the official seal.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the registrar, city clerk, or school district clerk, he shall deal with it in the same manner as if it had come by mail.

History: En. Sec. 130, Ch. 368, L. 1969.

23-3713. Envelopes containing ballots—deposit in box and rejection of ballot. (1) While the polls are open on election day, the election judges

shall first open the outer envelope only, and compare the signature of the voter on the application and on the affidavit.

(2) If the election judges find that the signatures correspond, that the affidavit is sufficient, and that the absentee elector is qualified and has not yet voted, they shall open the absentee voter's envelope and take out the ballot or ballots and, without unfolding it or permitting it to be examined, ascertain whether the stub is still attached and whether the number corresponds to the number in the certificate of the registrar or city clerk.

(3) If so, they shall endorse it the same way that other ballots are endorsed, detach the stub, deposit the ballots in the proper ballot boxes, and make entries in their election records to show the elector has voted.

(4) If the affidavit is found defective, the numbers do not correspond, or the voter is unqualified, the election judges, without opening the absentee ballot, shall mark across the face of it "rejected as defective" or "rejected as not an elector."

(5) The absentee ballot envelope, when it has been voted or rejected, shall be deposited in the ballot box containing the general or party ballots, and shall be retained and preserved in the manner provided for official ballots.

(6) If, upon opening the absentee ballot envelope, it is found that the stub of any ballot has been detached, or that the number does not correspond to the number on the certificate of the registrar or clerk, the ballot shall be rejected. It shall be marked on back as "rejected for" filling the blank with the reason. This statement shall be dated and signed by a majority of the election judges.

(7) The rejected ballots, together with the absentee ballot envelope bearing the application shall be enclosed in an envelope, sealed, and the judges shall write on the envelope, "rejected ballot of absentee voter" (writing in the elector's name). "The rejected ballot(s) is (are)"

(8) The election judges shall designate the rejected ballot as "general ballot," if it is a ballot for candidates that are rejected.

(9) If the rejected ballot is on a question submitted to the vote of the electors, the judges shall designate it as ballot question No. in the certificate on the envelope.

(10) A separate enclosing envelope shall be used for each absentee ballot rejected. This envelope shall be placed in the envelope in which the other ballots voted are required to be placed and shall not be opened without a court order.

(11) The registrar or clerk shall provide and deliver to the election judges suitable envelopes for enclosing rejected absentee ballots.

History: En. Sec. 131, Ch. 368, L. 1969.

Voting Accomplished

Voting is accomplished not merely by marking the ballot, but by having it delivered to the election officials and de-

posited in the ballot box before the closing of the polls on election day, and this is equally true for absent voters. *Maddox v. Board of State Canvassers*, 116 M 217, 223, 149 P 2d 112.

23-3714. Elector whose absentee ballot has been rejected as defective may vote in person. If the envelope containing the absentee ballot has been marked "rejected as defective" and deposited in the ballot box, the elector appearing has the same right to vote as if he had not attempted to

vote as an absent or physically incapacitated voter. If voting machines are used, he shall vote by machine as other voters.

History: En. Sec. 132, Ch. 368, L. 1969.

23-3715. Opening of envelopes after deposit. If an envelope containing an absentee ballot has been deposited unopened in the ballot box, the envelope shall be opened without a court order and the ballot cast.

History: En. Sec. 133, Ch. 368, L. 1969.

23-3716. Voting machines—canvass of votes. (1) In precincts where voting machines are used, the registrar, city clerk, or clerk of a school district shall print and provide ballots in official form for possible absent or physically incapacitated voters, and also pollbooks and ballot boxes required for precincts in which printed ballots are used.

(2) Absentee ballots received in those precincts shall be handled as provided in this chapter.

(3) In making the official canvass, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

History: En. Sec. 134, Ch. 368, L. 1969.

23-3717. False swearing perjury—official misconduct a misdemeanor.

(1) If a person willfully swears falsely to any affidavit he is guilty of perjury.

(2) If the registrar, clerk, or any election officer:

(a) Refuses or neglects to perform any duties prescribed by this act,

(b) Makes false statements in his certificate regarding affidavits,

(c) Looks at any marks made by the voter upon the ballot,

(d) Allows any person other than the voter to be present at the marking of such ballot,

(e) Sees any marks made by the voter on the ballot, he is guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500), imprisoned in the county jail for not more than six (6) months, or both.

History: En. Sec. 135, Ch. 368, L. 1969.

23-3718. "Elector in the United States service" defined. "Elector in the United States service" means:

(1) A member of the armed forces in the active service, and his spouse and dependents;

(2) A member of the merchant marine of the United States and his spouse and dependents;

(3) A member of a religious group or welfare agency assisting members of the armed forces of the United States who are officially attached to and serving the armed forces, and his spouse and dependents;

(4) A citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and his spouse and dependents when residing with or accompanying him.

History: En. Sec. 136, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 249, L. 1971.

sion (2); and revised and redesignated as subdivision (4) former subdivision (2) reading "A civilian employee of the United States in all categories serving outside the

Amendments

The 1971 amendment inserted subdivi-

territorial limits of the several states of Columbia and his spouse and dependents the United States or in the District of when residing or accompanying him."

23-3719. Registration of absent electors in United States service. (1) An elector in United States service who is absent from the state is entitled to register by mailing to the registrar a federal post card application filled out and signed under oath.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state.

History: En. Sec. 137, Ch. 368, L. 1969.

23-3720. Oath for elector in United States service. (1) Any oath required for electors in the United States service to register, request a ballot, or vote, may be administered and attested, within or without the United States, by any commissioned officer in active service, any member of the merchant marine of the United States designated for this purpose by the secretary of commerce, the head of any department or agency of the United States, any civilian official empowered by state or federal law to administer oaths, or any civilian employee designated by the head of any department or agency of the United States.

(2) No official seal is required to be affixed to the oath and neither the elector nor the certifying officer need disclose his whereabouts at the time of taking the oath except to the extent required by the federal post card application.

History: En. Sec. 138, Ch. 368, L. 1969; amd. Sec. 1, Ch. 248, L. 1971.

Amendments

The 1971 amendment inserted "any member of the merchant marine * * * or

agency of the United States" in the middle of subsection (1); added "or any civilian employee designated by the head of any department or agency of the United States" at the end of subsection (1); and made a minor change in phraseology.

23-3721. Classification of federal post card application. (1) Upon receipt by the registrar of a federal post card application properly filled out and signed under oath, the registrar shall classify the application according to the precinct in which the elector resides and arrange the cards in each precinct in alphabetical order.

(2) The registrar shall, upon receipt of any federal post card application, immediately enter upon the official register of the county in the proper precinct the full information given by the elector.

(3) Immediately upon entry in the official registry of the name of the elector the registrar shall send to him by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days preceding the election another federal post card application to his registrar or city clerk.

(4) A federal post card application received from an elector in the United States service within forty-five (45) days preceding an election shall be treated as a simultaneous application for registration and for ballot. Where the elector is already registered the federal post card application shall be treated as an application for a ballot.

History: En. Sec. 139, Ch. 368, L. 1969; amd. Sec. 1, Ch. 250, L. 1971.

Amendments

The 1971 amendment rewrote subsection

(3) which formerly read, "If an elector in the United States service has not already requested an absentee ballot, the registrar shall, immediately upon entry in the official registry of the name of the elector send to him by the fastest mail service available a notice that he has

been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days preceding the election another federal post card application to his registrar or city clerk"; and added subsection (4).

23-3722. Method of registration of voter absent from county. (1) An elector who is unable to make personal application for registration by reason of being absent from the county, may register to vote prior to the close of registration before any election, by appearing, executing and verifying under oath, before a notary public or other officer empowered to administer oaths, at any place within the United States, a registration card as provided in sections 23-3701 through 23-3723.

(2) He must return the card in sufficient time to reach the registrar before the close of registration.

(3) The elector's name may not be entered in the official register until at least two (2) registered electors of the county in which the elector desiring to be registered has his place of residence as stated in his application for registration, appear before the registrar and make affidavits in writing, stating that they are personally acquainted with the applicant, are familiar with and know his signature, and have seen him write and that the signature subscribed to the application or [for] registration is the signature of the elector.

History: En. Sec. 140, Ch. 368, L. 1969.

23-3723. Registration card mailed upon application. (1) The registrar of the county of the elector's legal residence shall furnish to any elector applying, whether application be made by mail, telegram or telephone, a registration card.

(2) The card shall be sent postage prepaid by the registrar to the address furnished by the elector at the time of making his application.

History: En. Sec. 141, Ch. 368, L. 1969.

23-3724. Registration of electors whose United States service or employment has terminated. Electors in the United States service who have been honorably discharged from the armed forces of the United States or who have terminated their service or employment outside the territorial limits of the United States too late to register at the time when, and place where, registration is required, shall be entitled to register for the purpose of voting at the next ensuing election after such discharge or termination of employment up to 12 noon on the day before the election, provided that said elector shall execute a sworn affidavit qualifying him under this section, to be filed in the office of his registration. County registrar shall provide to the person registering under the provisions of this section, a certificate stating the precinct in which he is entitled to vote which shall be presented to the election judges of that precinct at the time of voting.

History: En. 23-3724 by Sec. 1, Ch. 247, L. 1971.

Title of Act

An act to amend Title 23, Chapter 37, R.C.M. 1947, by adding a new section re-

lating to absentee voting and registration, providing for the registration of electors whose United States services or employment has terminated too late to register in person to vote in the next ensuing election.

CHAPTER 38

VOTING MACHINES

Section

- 23-3801. Voting machines—secretary of state.
- 23-3802. Specifications of machines required.
- 23-3803. Providing voting machines—payment.
- 23-3804. Preparation of machines for use.
- 23-3805. Write-in ballots.
- 23-3806. Placement of machines—time voter to remain in booth—election board make-up.
- 23-3807. Registrar to instruct election judges.
- 23-3808. Publication of information concerning machines.
- 23-3809. Voting machine to be exhibited.
- 23-3810. Furnishing samples and supplies.
- 23-3811. Registry lists—provision for number of each ballot.
- 23-3812. Assistance to illiterate, blind or physically disabled voters.
- 23-3813. Counting the votes.
- 23-3814. Procedure after count is ascertained.
- 23-3815. Disposition of write-in ballots and tally sheets.
- 23-3816. Return sheets—contents.
- 23-3817. Experimental use of machines.
- 23-3818. Machine breakdowns—electors may vote by paper ballot upon request.
- 23-3819. Use of separate paper ballots for voting on certain money issues where machines do not allow proper lockout.
- 23-3820. Penalty for tampering with or injuring machines.
- 23-3821. Penalty for fraudulent returns or certificates.
- 23-3822. Applicability of election laws in general where not in conflict with this chapter.

23-3801. Voting machines—secretary of state. (1) Before any voting machine can be used, the secretary of state shall:

(a) Examine the machine to determine if it complies with the requirements of sections 23-3801 through 23-3822.

(b) Within thirty (30) days after examining a machine, file a report in his office on each machine examined;

(c) Within five (5) days after filing the report, transmit to the commissioners, city council, or other board having control of elections in each county or city a list of the machines approved.

(2) A machine shall not be used unless approved by the secretary of state sixty (60) days or more prior to the election.

(3) The secretary of state may employ qualified mechanics who are electors to assist him in duties required by this chapter and compensate them.

(4) The person or company submitting a machine for examination before the filing of the report shall pay the compensation and expenses of mechanics connected with the examination to the secretary of state for deposit in the state general fund.

History: En. Sec. 142, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Constitutionality

Prior voting machine law was not invalid as in contravention of section 1, article IX of the constitution of Montana which provided that all elections shall be "by ballot"; the term "ballot" be-

ing employed not to designate a piece of paper, but a method to ensure, so far as possible, the secrecy and integrity of the popular vote. *State ex rel. Fenner v. Keating*, 53 M 371, 377, 163 P 1156.

23-3802. Specifications of machines required. (1) A machine or machine system may not be approved unless:

- (a) An elector can vote in secrecy as he is entitled to vote by law;
- (b) An elector is prevented from voting for any candidate or upon any question more than once and is also prevented from voting for any person or on any proposition, if he is not entitled to vote;

- (c) An elector can vote a split ticket if he desires;

- (d) Every vote cast is registered and recorded.

(2) The candidates for president and vice-president shall appear on the machine ballot. Presidential electors shall not appear on the machine.

(3) The machine or machine system must be constructed so that it cannot be tampered with for a fraudulent purpose and must also be constructed so that during the progress of the voting no person can see or know the number of votes registered for any candidate or on any proposition.

History: En. Sec. 143, Ch. 368, L. 1969.

Tampering with Machine

Act does not require a voting machine which will be proof against all tampering or manipulation, but one which, when honestly operated, will enable an elector to secretly cast his vote as he wishes to

cast it and have it counted as cast, and which cannot be tampered with or manipulated in such a way that, though properly operated by the elector, it would seem to receive and record his vote without doing so. State ex rel. Fenner v. Keating, 53 M 371, 381, 163 P 1156.

23-3803. Providing voting machines — payment. (1) Commissioners and councils may provide approved voting machines as practicable.

(2) Not later than September 10, prior to a general election, the commissioners or council of a city may unite two (2) or more precincts to use a voting machine. Notice of the consolidation shall be given as provided by law for the change of election districts.

(3) Funds for voting machines may be provided by interest-bearing bonds, certificates of indebtedness, or other obligations. The term of the bonds, certificates, or other obligations may not exceed ten (10) years and they shall not be issued or sold at less than par.

History: En. Sec. 144, Ch. 368, L. 1969.

23-3804. Preparation of machines for use. (1) The registrar or city clerk shall put the proper ballots upon each voting machine corresponding with the sample ballots. The registrars or city clerks shall also:

- (a) Set, adjust, and put the machines in order;

- (b) Deliver the machines to the precincts together with necessary furniture and appliances;

- (c) Place a shield painted black and marked "not in use" over the keys or levers not in use on the voting machine.

(2) In primary elections a separate row or column shall be assigned to each political party and at least one (1) row shall separate the rows assigned to the two (2) major political parties. This row shall be used for the nonpartisan judicial ballot.

(3) In general elections the ballot shall be arranged and the names of the candidates rotated to conform as nearly as possible to the requirements for paper ballots.

(4) Candidates of the two (2) major parties shall be rotated between the first two (2) horizontal rows or vertical columns, and candidates of minor parties and independent candidates shall be rotated between succeeding rows or columns.

(5) The party designation of each candidate shall appear below his name in type as large as machine design will allow.

(6) The judicial ballot shall appear in the first two (2) horizontal or vertical rows or columns as prescribed by section 23-3513.

(7) The election judges shall compare the ballots on the machine with sample ballots, ensure that all counters are set at zero and the machine is in order. They shall not thereafter permit the machine to be operated or moved except by electors voting. They shall also see that arrangements are made for voting write-in ballots on the machine, if the machine is so arranged.

History: En. Sec. 145, Ch. 368, L. 1969.

23-3805. Write-in ballots. (1) If a voting machine allows registry or recording of votes for candidates whose names are not on the official ballot, these ballots are write-in ballots.

(2) A person whose name appears on a ballot shall not receive votes for the same office on a device for casting a write-in ballot.

History: En. Sec. 146, Ch. 368, L. 1969.

23-3806. Placement of machines—time voter to remain in booth—election board make-up. (1) The exterior of the voting machines and every part of the polling place shall be in plain view of the election judges.

(a) The machines shall be placed so that other persons on the premises cannot see how the voter casts his vote.

(b) The election judges shall not permit any person to remain in any position that would permit him or them to see how the voter votes or has voted.

(c) A voter shall not remain within the voting machine booth or compartment longer than is reasonably necessary to vote. If he refuses to leave, the election judges shall remove him.

(2) The election board of a precinct in which a voting machine is used consists of three (3) election judges and any special board of election judges appointed to count absentee ballots. If more than one (1) machine is used, one (1) additional election judge shall be appointed for each additional machine.

History: En. Sec. 147, Ch. 368, L. 1969.

23-3807. Registrar to instruct election judges. (1) Before each election, the registrar shall instruct all election judges in the use of the machine and their duties. He shall give to each election judge that has re-

ceived instruction, and is fully qualified to conduct the election with the machine, a certificate to that effect.

(2) The registrar shall call meetings of the election judges as necessary for instruction. Election judges shall attend meetings as necessary to receive the proper instructions.

(3) An election judge shall not serve if voting machines are used unless he has received instruction, is fully qualified to perform duties in connection with the machine, and has received a certificate to that effect from the custodian. However, this shall not prevent an emergency appointment of an election judge.

History: En. Sec. 148, Ch. 368, L. 1969.

23-3808. Publication of information concerning machines. Not more than ten (10) nor less than three (3) days before an election at which voting machines are used, the registrar or city clerk shall publish in a newspaper of general circulation in the county:

(1) A diagram showing the voting machine with official ballot labels;

(2) A statement of the locations where voting machines are on public exhibition;

(3) Illustrated instructions on how to vote.

History: En. Sec. 149, Ch. 368, L. 1969.

23-3809. Voting machine to be exhibited. A voting machine shall be on exhibition in the office of the registrar or city clerk where voting machines are used. The registrar or city clerk shall demonstrate the voting machine to any inquiring voter.

History: En. Sec. 150, Ch. 368, L. 1969.

23-3810. Furnishing samples and supplies. (1) Not later than forty (40) days before an election, the secretary of state shall prepare samples of the printed matter and supplies named in this section and furnish one of each to the election officials where machines are used. The samples shall meet the requirements of the election and the construction of the machine used.

(2) The registrar or city clerk shall provide supplies for each machine including:

(a) Written instructions for the election judges on testing and preparing the machines;

(b) A certificate for the election judges to certify that they have tested and prepared the machine;

(c) A certificate for the person preparing the machine to certify that the machine has been examined and is properly prepared for the election;

(d) A certificate for party representatives to verify that they have witnessed the testing and preparation of the machines;

(e) A certificate for the deliverer of the machine to certify that he has delivered the machines to the polling places in good order;

(f) A card stating the penalty for tampering with or injuring a voting machine;

(g) Two (2) seals for sealing the voting machine;

(h) One (1) envelope with a detachable delivery receipt in which the keys to the voting machine can be sealed and delivered to the election officials having printed on it the designation and location of the election district, the number of the machine, the number on the protective counter after the machine has been prepared for the election, and the number of the seal;

(i) One (1) envelope in which keys to the voting machine can be returned after the election;

(j) Two (2) statements of canvass for election officers to report the canvass of votes and other necessary information relating to the election;

(k) Three (3) complete sets of ballot labels in a form prescribed by the secretary of state and two (2) diagrams of the face of the machine with the ballot labels on the machine, each having proper voter instructions;

(l) Six (6) instructions to election judges and six (6) notices of the instruction meeting;

(m) Six (6) certificates that election judges have attended the instruction meeting, received instruction, and are qualified to conduct the machine election.

History: En. Sec. 151, Ch. 368, L. 1969.

23-3811. Registry lists—provision for number of each ballot. If voting machines are used, the registry lists shall contain a column to enter the number of each ballot as indicated by the number on the machine counter. Books or blanks for making poll lists shall not be provided.

History: En. Sec. 152, Ch. 368, L. 1969.

23-3812. Assistance to illiterate, blind or physically disabled voters. [(1)] A voter who declares he is unable to vote because he cannot read or write, is blind, or physically disabled shall be assisted as provided in section 23-3609.

(2) A person who deceives an elector voting under this section shall be punished as provided in section 94-1407, R. C. M. 1947.

History: En. Sec. 153, Ch. 368, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed subsection designation "(1)."

23-3813. Counting the votes. When the polls close, the election judges shall immediately lock the machine or remove the recording device and open the registering or recording compartments in the presence of any person desiring to attend. They shall ascertain the number of votes cast for each candidate, canvass, record, announce, and return the votes as provided by law.

History: En. Sec. 154, Ch. 368, L. 1969.

23-3814. Procedure after count is ascertained. (1) After the count is ascertained, the election judges shall place the machine in full view of

the public for one (1) hour so that any person may view the number of votes cast.

(2) Immediately after the hour has passed, the election judges shall seal and lock the machine. Unless used in a city primary election or ordered opened earlier by a court or the county recount board, the machine shall remain sealed and locked for twenty (20) days.

(3) If a machine has been used in a city primary election, it shall remain locked and sealed for at least five (5) days, unless opened by court order.

History: En. Sec. 155, Ch. 368, L. 1969.

23-3815. Disposition of write-in ballots and tally sheets. (1) The election judges shall return write-in ballots in a sealed package endorsed "write-in ballots." The election judges shall indicate the precinct and county and file the package with the registrar or city clerk. Each package shall be preserved for six (6) months after the election and may be opened only upon order of a court or the county recount board. At the end of six (6) months, the package shall be destroyed by the registrar or city clerk unless a court orders otherwise.

(2) Tally sheets taken from the machine, if any, shall be returned in the same manner.

History: En. Sec. 156, Ch. 368, L. 1969.

23-3816. Return sheets—contents. Officers who furnish tally sheets shall also furnish return blanks and certificates to the election officers. The return sheets shall:

(1) Have each candidate's name designated by the same reference character that the name bears on the ballot labels and counters and allow for writing in a vote for the candidate in figures, words, or both;

(2) Provide for the return of the vote on questions;

(3) Have a blank for indicating the precinct, ward, number and make of machine used, and other necessary information;

(4) Have a certificate to be executed before the polls open by the election judges stating that all counters except the protective counter, if any, and except as otherwise noted, stood at "000" at the beginning of the election, that all counters were examined before the election, that ballot labels were correctly placed on the machine and corresponded to the sample ballot, and other statements as the particular machine may require;

(5) Have a second certificate stating the manner of closing the polls and verifying the returns; that the returns are correct; giving the indication of the public counter, poll list, and protective counter, if any. The certificate shall specify the procedure of canvassing the vote and locking the machine and shall be signed by the election officials. The certificate and attest of the election officers shall appear on each return sheet.

History: En. Sec. 157, Ch. 368, L. 1969.

23-3817. Experimental use of machines. Officials authorized to adopt voting machines, may provide for the experimental use at an election of

a machine, approved by the secretary of state, in one (1) or more precincts without a formal adoption or purchase of the machine. The use at an election is valid for all purposes as if the machine had been formally adopted.

History: En. Sec. 158, Ch. 368, L. 1969.

23-3818. Machine breakdowns—electors may vote by paper ballot upon request. (1) If a machine becomes unworkable or unfit for use, voting shall proceed on another available machine or as in cases where machines are not used. The registrar shall furnish each voting place with a supply of ballots and other supplies to be used in case of emergency.

(2) Where voting machines are used, an elector may request to vote by paper ballot instead of using the voting machines. The election judges shall provide the elector with a paper ballot when requested. Paper ballots shall be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 159, Ch. 368, L. 1969.

23-3819. Use of separate paper ballots for voting on certain money issues where machines do not allow proper lockout. In precincts where voting machines are used and the machines do not allow proper lockout, separate paper ballots shall be issued for money issues which do not involve the question of incurring of a state indebtedness, issuance of state bonds or debentures other than for refunding, or the levy of a tax for state purposes.

History: En. Sec. 160, Ch. 368, L. 1969.

23-3820. Penalty for tampering with or injuring machines. Any person who tampers, disarranges, defaces, injures, or impairs a voting machine in any way, or who mutilates, injures, or destroys any ballot or any appliance used in connection with a voting machine shall be imprisoned in the state prison for a period of not more than ten (10) years, be fined not more than one thousand dollars (\$1,000), or both.

History: En. Sec. 161, Ch. 368, L. 1969.

23-3821. Penalty for fraudulent returns or certificates. A person who purposely causes the vote on a machine to be incorrectly taken down as to the candidate or proposition voted on; who knowingly causes a false statement, certificate, or return of any kind to be signed or who knowingly consents to such things being done, shall be imprisoned in the state prison not more than (10) years, be fined not more than one thousand dollars (\$1,000), or both.

History: En. Sec. 162, Ch. 368, L. 1969.

23-3822. Applicability of election laws in general where not in conflict with this chapter. All laws applicable to elections where voting is not done by machine, and all penalties prescribed for violations of those laws, apply to elections and precincts where voting machines are used if they are not in conflict with the provisions of sections 23-3801 through 23-3821.

History: En. Sec. 163, Ch. 368, L. 1969.

CHAPTER 39

ELECTRONIC VOTING SYSTEMS

Section

- 23-3901. Purpose of act.
23-3902. Definitions.
23-3903. Use of electronic voting systems—paper ballots may be used upon request.
23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices.
23-3905. Procedure upon closing polls.
23-3906. Rules and regulations—specifications for devices and equipment.
23-3907. Applicability of election laws in general where not in conflict with this chapter.

23-3901. Purpose of act. The purpose of sections 23-3902 through 23-3907 is to authorize the use of electronic voting systems in which the voter records his votes by means of marking or punching a ballot or one or more ballot cards, which are so designed that votes may be counted by data processing machines at one or more counting places.

History: En. Sec. 164, Ch. 368, L. 1969.

23-3902. Definitions. As used in sections 23-3903 through 23-3907, unless otherwise specified:

(1) "Automatic tabulating equipment" includes apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results.

(2) "Ballot card" means a ballot which is voted by the process of punching.

(3) "Ballot labels" means the cards, paper, booklet, pages or other materials containing the names of offices and candidates and statements of measures to be voted on.

(4) "Ballot" may include ballot cards, ballot labels and paper ballots.

(5) "Counting location" means a location selected by the registrar or city clerk for the automatic processing or counting, or both, of ballots which may be in the same county or in another county.

(6) "Electronic voting system" means a system of casting votes by use of marking devices and tabulating ballots employing automatic tabulating equipment or data processing equipment.

(7) "Marking device" means either an apparatus in which ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter or any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

History: En. Sec. 165, Ch. 368, L. 1969.

23-3903. Use of electronic voting systems—paper ballots may be used upon request. (1) Electronic voting systems may be used in elections, after approval as provided by law, provided that such systems enable the voter to cast a vote in secrecy for all offices and all measures on which he is entitled to vote, and that the automatic tabulating equipment may be

set to reject all votes for any office or measure when the number of votes therefor exceeds the number which the voter is entitled to cast, or when the voter is not by law entitled to cast a vote for the office or measure.

(2) Electronic voting systems may be used at primary elections provided the voter can secretly select the party for which he wishes to vote, and the automatic tabulating equipment will count only votes for the candidates of one party, and will reject all votes for an office when the number of votes therefor exceeds the number which the voter is entitled to cast, and will reject all votes of a voter cast for candidates of more than one party.

(3) So far as applicable, the procedure provided for voting paper ballots shall apply.

(4) The governing body of any county or city may, after approval as provided by law, adopt, experiment with, or abandon any electronic voting system herein authorized and approved for use in the state, and may use such system in all or a part of the precincts within its boundaries, or in combination with paper ballots. It may enlarge, consolidate or alter the boundaries of the precincts where an electronic voting system is to be used.

(5) In precincts where an electronic voting system is used, an elector may request a paper ballot to cast his vote and the election judges shall supply the elector with the paper ballot when so requested. These ballots will be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 166, Ch. 368, L. 1969.

23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices. (1) In precincts where an electronic voting system is used, a sufficient number of voting booths shall be provided for the use of such systems and the booths shall be arranged in the same manner as provided for use with paper ballots.

(2) The officials charged with the duty of providing ballots, ballot cards or ballot labels for any polling place shall provide therefor sample ballots, ballot cards or ballot labels which shall be exact copies of the official ballots which are caused to be printed by them; said sample ballots shall be arranged in the form of a diagram showing the front of the marking device as it will appear after the ballots are arranged therein for voting on election day. Such sample ballots shall be posted by the election judges near the entrance of the voting booths and shall be there open to public inspection during the whole of election day.

(3) The ballot information, whether placed on the ballot or on the marking device, shall, as far as practicable, be in the order of arrangement provided for paper ballots except that such information may be in vertical or horizontal rows, or on a number of separate pages. Ballots for all questions must be provided in the same manner and must be arranged on or in the marking device in the places provided for such purpose. Any

voter who spoils his ballot or ballot card or makes an error may return it to the election board and secure another.

(4) A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the elector places his ballot card after voting shall be provided where necessary to permit electors to write in the names of persons whose names are not on the ballot.

(5) The registrar or city clerk shall cause the marking devices to be put in order, set, adjusted and made ready for voting when delivered to the election precincts. Before the opening of the polls the election judges shall compare the ballots used in the marking device with the sample ballots furnished, and see that the names, numbers and letters thereon agree, and shall certify thereto on forms provided for this purpose. The certification shall be filed with the election returns.

(6) Within five (5) days prior to the election day, the registrar or city clerk shall have the automatic tabulating equipment tested to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least forty-eight (48) hours prior thereto by publication once in one or more daily or weekly newspapers published in the county, city, or town using such equipment if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be open to representatives of the political parties, candidates, the press and the public. The test shall be conducted by processing a pre-audited group of ballots so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made before the automatic tabulating equipment is approved. The test shall be repeated immediately before the start of the official count of the ballots, in the same manner as set forth above. After the completion of the count, the programs used and ballots shall be sealed, retained and disposed of as provided for paper ballots.

History: En. Sec. 167, Ch. 368, L. 1969.

23-3905. Procedure upon closing polls. (1) In precincts where an electronic voting system is used, as soon as the polls are closed, the election judges shall secure the marking devices against further voting. They shall thereafter open the ballot box and count the number of ballots or envelopes containing ballots that have been cast to determine that the number of ballots does not exceed the number of voters shown on the poll or registry lists. If there is an excess, this fact shall be reported in writing to the appropriate election officer in charge with the reasons therefor, if known. The total number of voters shall be entered on the tally sheets. The election judges shall thereupon count the write-in votes and prepare a return of such votes on forms provided for this purpose. If ballot cards are used, all ballots on which write-in votes have been recorded shall be serially numbered, starting with the number one, and the same number shall be placed on the ballot card of the voter. The inspectors or other appropriate

precinct election officials shall compare the write-in votes with the votes cast on the ballot card and if the total number of votes for any office exceeds the number allowed by law, a notation to that effect shall be entered on the back of the ballot card and its shall be returned to the counting location in an envelope marked "defective ballots" and such invalid votes shall not be counted. So far as applicable, provisions relating to defective paper ballots shall apply.

(2) The election judges shall place all ballots that have been cast in the container provided for that purpose, which shall be sealed and delivered forthwith by the election judges to the counting location or other designated place, together with the unused, void and defective ballots and returns.

(3) All proceedings at the counting location shall be under the direction of the registrar or city clerk under the observation of at least three election judges designated by the commissioners or city council and shall be open to the public, but no persons except those employed and authorized for the purpose shall touch any ballot, ballot container or return. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a defective ballot which shall not include the invalid votes. All duplicate ballots shall be clearly labeled "duplicate," shall bear a serial number which shall be recorded on the damaged or defective ballot and shall be counted in lieu of the damaged or defective ballot.

(4) The return printed by the automatic tabulating equipment, to which has been added the return of write-in and absentee votes, shall constitute the official return of each precinct or election district. Upon completion of the count the returns shall be open to the public.

History: En. Sec. 168, Ch. 368, L. 1969.

23-3906. Rules and regulations—specifications for devices and equipment. (a) The secretary of state, state auditor and president of the Montana county clerk and recorders association shall constitute a board of election devices, which shall promulgate rules for the administration of this section, and shall approve the marking devices and automatic tabulating equipment used in electronic voting systems.

(b) No marking device or automatic tabulating equipment shall be approved unless it fulfills the following requirements:

(1) It shall permit and require voting in absolute secrecy.

(2) It shall permit each elector to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, and no others; to vote for as many persons for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and to vote, where applicable, for all candidates of one (1) party or to vote a split ticket as he desires.

(3) It shall permit each elector, at presidential elections, by one (1) punch or mark to vote for the candidates of that party for presidential elector as a group.

(4) It shall comply with all other requirements of the election laws so far as they are applicable.

(5) No electronic voting system presently in use by any county, city or town in Montana shall be disapproved for use in such county, city or town by the board, except upon application by the governing body of said county, city or town.

History: En. Sec. 169, Ch. 368, L. 1969.

23-3907. Applicability of election laws in general where not in conflict with this chapter. All laws of this state applicable to elections where voting is done in another manner than by electronic voting systems and all penalties prescribed for violation of such laws, shall apply to elections and precincts where electronic voting systems are used, in so far as they are not in conflict with the provisions of sections 23-3901 through 23-3906.

History: En. Sec. 170, Ch. 368, L. 1969.

CHAPTER 40

CANVASS OF VOTES—RETURNS AND CERTIFICATES

Section

- 23-4001. Votes to be publicly canvassed upon closing of polls.
- 23-4002. Method of canvass.
- 23-4003. Counting ballots—pollbooks.
- 23-4004. Marking rejected ballots.
- 23-4005. Signing and certifying pollbooks.
- 23-4006. Items to be sent to registrar by election judges—manner of sending.
- 23-4007. Disposition of items by registrar.
- 23-4008. Disposition of items in event of contest.
- 23-4009. Commissioners as board of county canvassers—meetings—registrar as clerk of board.
- 23-4010. Canvassing returns, time of—messenger—certification that polls were not open.
- 23-4011. Canvass to be public—nonessentials to be disregarded in counting returns.
- 23-4012. Statement of the result to be entered of record.
- 23-4013. Declaration of persons elected—certifying tie.
- 23-4014. Certificates issued by the clerk.
- 23-4015. State returns, how made and transmitted.
- 23-4016. State canvassers, composition and meeting of board.
- 23-4017. Messenger may be sent for returns.
- 23-4018. Governor to issue commissions.
- 23-4019. Defect in form of returns to be disregarded.

23-4001. Votes to be publicly canvassed upon closing polls. When the polls are closed, the election judges shall immediately canvass the votes. The canvass shall be public and continue without adjournment until completed and the result is publicly declared.

History: En. Sec. 171, Ch. 368, L. 1969.

23-4002. Method of canvass. (1) The canvass shall begin by a comparison of the pollbooks and the correction of any mistakes until they agree.

(2) The election judges shall take ballots unopened out of the box to determine whether each ballot is single.

(3) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the pollbooks.

(4) A ballot which is not endorsed by the official stamp is void and shall not be counted. A ballot or part of a ballot is void and shall not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part.

(5) If two (2) or more ballots are folded together to look like a single ballot, they shall be laid aside until the count is complete. The election judges shall compare the count with the pollbooks and if a majority believe that the ballots folded together were voted by one (1) elector, they must be rejected; otherwise they must be counted.

(6) If the ballots exceed the number of names on the pollbooks they shall be placed in the box, and one (1) of the election judges shall publicly draw from the box and destroy unopened ballots equal to the excess. The election judges shall record in the pollbooks the number of ballots destroyed.

History: En. Sec. 172, Ch. 368, L. 1969.

Determining Elector's Intention

Where, from the manner in which a ballot was marked, it was impossible to determine the elector's choice, the ballot was void under prior section, and should not have been counted in an election contest. *Carwile v. Jones*, 38 M 590, 598, 101 P 153.

A ballot bearing a rather indistinct "X" before contestant's name but sufficient to be discernible should have been counted for him where there was no erasure and the elector voted for no other candidate for that office; and under the rule that the elector's intention must plainly appear, where the voter marked two squares for the office of sheriff, one of which showed an extra line through the "X" indicating perhaps, that the voter changed his mind but for the fact that squares before the names of other candidates were marked similarly, the intention was not clear and the ballot should not have been counted. *Peterson v. Billings*, 109 M 390, 392, 96 P 2d 922.

Under prior section, and the rule that election laws must be liberally construed,

a ballot showing the intersection of the "X" outside the square should have been counted for contestant, and one showing the intersection of the cross squarely on the line of the square was properly so counted for him. *Peterson v. Billings*, 109 M 390, 393, 96 P 2d 922.

Official Stamp on Ballot Stub

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, although in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub, thus leaving the ballot without the official designation, did not render the ballots void, and the same should have been counted. *Harrington v. Crichton*, 53 M 388, 396, 164 P 537.

School Elections

The validity of contested school elections is determined by the laws of general elections, including canvassing statute. *Woolsey v. Carney*, 141 M 476, 378 P 2d 658.

23-4003. Counting ballots—pollbooks. (1) When the ballots and poll lists agree, the election judges shall count and determine the votes cast for each person.

(2) In counting, the ballots shall be opened singly by one (1) of the election judges and the contents read aloud to the other judges.

(3) As the ballots are read, each clerk must write on a tally sheet the name of every person voted for and the office, and keep tallies of the number of votes for each person.

(4) The tally sheets shall be compared and their correctness ascertained, and the clerks, under the supervision of the election judges, shall immediately write in the pollbooks:

- (a) The names of all persons who received votes;
- (b) The offices for which they received votes;
- (c) Total votes received by each person as shown by the tally sheets.
- (5) A ballot or vote rejected by the election judges shall not be included in the count.

History: En. Sec. 173, Ch. 368, L. 1969.

23-4004. Marking rejected ballots. A ballot rejected for illegality shall be marked by the election judges, by writing across the face "Rejected on the ground of", filling the blank with a brief statement of the reasons for the rejection. The statement shall be dated and signed by a majority of the judges.

History: En. Sec. 174, Ch. 368, L. 1969.

23-4005. Signing and certifying pollbooks. Immediately after the votes are counted and the ballots sealed up, the pollbooks shall be signed and certified to by the election judges and clerks in a form prescribed by the secretary of state.

History: En. Sec. 175, Ch. 368, L. 1969.

23-4006. Items to be sent to registrar by election judges—manner of sending. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely sealed and directed to the registrar:

- (a) The precinct registers,
- (b) The lists of persons challenged,
- (c) Both of the pollbooks,
- (d) Both of the tally sheets.
- (2) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all unused ballots with the numbered stubs attached.
- (3) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all ballots voted including those not counted or allowed, and all detached stubs from ballots voted. This envelope shall be endorsed on the outside "ballots voted."
- (4) Each election judge shall write his name across the seal of each of the envelopes or packages. The ballot box shall be returned to the registrar.
- (5) The envelopes or packages required by this section shall be delivered to one (1) of the election judges chosen by lot, unless otherwise agreed upon, before they adjourn. The judge shall deliver them to the registrar in person or by registered mail no later than 10 a. m. on the day following the election.

History: En. Sec. 176, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

One Copy To Be Returned

The law contemplates that the election board in the precinct will return to the clerk and recorder but one tally sheet and

one copy of the pollbook. State ex rel. Lynch v. Batani, 103 M 353, 361, 62 P 2d 565.

23-4007. Disposition of items by registrar. (1) When the registrar receives the packages or envelopes, he shall file those containing the ballots voted and detached stubs and the unused ballots and keep them unopened for twelve (12) months. After twelve (12) months, if there is no contest begun in a court or no recount, he shall burn the envelopes without opening them or examining their contents.

(2) The registrar shall file the envelopes or packages containing the precinct registers, certificates of registration, pollbooks, tally sheets, and oaths of election officers. He shall keep them unopened until the commissioners meet to canvass the returns. The commissioners shall open the envelopes or packages.

(3) Immediately after the returns are canvassed, the registrar shall file the pollbooks, election records, and the papers delivered to the commissioners.

History: En. Sec. 177, Ch. 368, L. 1969.

23-4008. Disposition of items in event of contest. If there is a contest within twelve (12) months, the registrar shall keep the envelopes or packages unopened until the contest is finally determined and then destroy them. If the court has custody of the envelopes or packages as evidence, they are in the custody of the court and the registrar shall not destroy them.

History: En. Sec. 178, Ch. 368, L. 1969.

23-4009. Commissioners as board of county canvassers—meetings—registrar as clerk of board. (1) The commissioners are ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the commissioners within three (3) days after each election, at 8 a. m. to canvass the returns.

(2) If one (1) or more of the commissioners cannot attend the meeting, his place shall be filled by one (1) or more county officers in this order: treasurer, assessor, sheriff, so that the board of county canvassers membership equals membership on the board of commissioners.

(3) The registrar is clerk of the board of county canvassers.

History: En. Sec. 179, Ch. 368, L. 1969.

Change in Membership of Board

The members of a county board of canvassers do not necessarily embrace the same officers, but are subject to changes which depend upon circumstances, and a writ of mandate, issued to compel such board to reconvene and canvass the returns from an election precinct which they had excluded, is properly directed to the

particular individuals comprising the board, describing them by name, and as constituting the board of county canvassers of election returns for a certain county of the state, the particular members of such board at the time in question being the persons against whom obedience must, if necessary, be enforced. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 29, 31 P 879.

23-4010. Canvassing returns, time of — messenger — certification that polls were not open. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received or until there have been seven (7) postponements.

(3) If the returns from an election precinct have not been received by the registrar within seven (7) days after an election, he shall immediately send a messenger to the election judges. The messenger must obtain the returns from the judges and return them to the registrar.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the registrar. The registrar shall enter the certification in the minutes and in the statement required by section 23-4012.

History: En. Sec. 180, Ch. 368, L. 1969.

23-4011. Canvass to be public—nonessentials to be disregarded in counting returns. (1) The canvass shall be public. It shall proceed by opening the returns and determining the vote for each person and each proposition from each precinct and a declaration of the results.

(2) The returns shall not be rejected if they do not show who administered the oath to the election judges or clerks, failure to complete all the certificates in the pollbooks, or failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

History: En. Sec. 181, Ch. 368, L. 1969.

Rejection of Returns

A county board of canvassers has no authority to inquire into the validity of a certificate of nomination of a nominee for office, and therefore, where the election returns are genuine and properly certified, prohibition will not lie to restrain the board from canvassing such returns and counting the vote cast for such person upon the ground that the nomination was invalid. *Pigott v. Board of Canvassers of Cascade County*, 12 M 537, 538, 31 P 536.

The duties of a county canvassing board are ministerial, and such board has no authority to exclude the returns of an election precinct, regularly made, upon the ground that the voting was shown by affidavits to be illegal, and, having done so, may be compelled by mandamus to canvass such returns. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 30, 31 P 879. See also *State ex rel. Breen v. Toole*, 32 M 4, 10, 79 P 403; *Poe v. Sheridan County*, 52 M 279, 288, 157 P 185.

Where a county canvassing board issued a certificate of election to a candidate for the legislative assembly after unlawfully excluding the returns of a particular precinct, and then adjourned sine die, such board may be compelled by mandamus to reconvene and canvass the returns so excluded, and issue a certificate of election to the person shown by a complete canvass to be entitled thereto. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

Returns in the pollbook being left blank, and the certificate thereto not being properly filled in, are not grounds for rejecting returns, nor are they such irregularities as will entitle a board of canvassers to reject them. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

It is the duty of the board of canvassers to procure the check lists and surrendered lists before rejecting the vote of a precinct as returned by the pollbooks alone. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

23-4012. Statement of the result to be entered of record. As soon as the results are declared, the clerk of the board shall enter on the records:

- (1) Votes cast in the county;
- (2) Names of the persons voted for and the propositions voted upon;
- (3) Office for which each person was voted for;
- (4) Votes by precinct for each person and for and against each proposition;

(5) Votes by county for each person, and for and against each proposition.

History: En. Sec. 182, Ch. 368, L. 1969.

23-4013. Declaration of persons elected—certifying tie. (1) The board shall declare elected the persons having the highest number of votes given for each office to be filled in a single county or subdivision of a county.

(2) If a recount shows that two (2) or more persons received an equal and sufficient number of votes for the office of state senator or state representative, the county recount board shall certify this to the governor.

History: En. Sec. 183, Ch. 368, L. 1969.

Deceased Candidate Receives Majority

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candi-

date whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. State ex rel. Wolff v. Geurkink, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-4014. Certificates issued by the clerk. (1) The clerk shall immediately deliver to each person elected a certificate of election signed by him and authenticated with the seal of the board.

(2) The certificate shall state that the official bond must be filed within thirty (30) days after notice of election or appointment and that failure to file the bond vacates the office.

(3) This certificate shall not be issued to persons elected district judge.

History: En. Sec. 184, Ch. 368, L. 1969.

Cross-Reference

County clerk to issue certificate of election, sec. 16-1157.

23-4015. State returns, how made and transmitted. (1) After a general or special election, the clerk shall make an abstract of the vote for members of the legislative assembly, for officers elected in the state at large, and for judicial officers other than justices of the peace.

(2) The clerk shall seal the abstract, endorse it "Election Returns," and immediately send it to the secretary of state by registered mail.

History: En. Sec. 185, Ch. 368, L. 1969.

23-4016. State canvassers, composition and meeting of board. Within twenty (20) days after the election, or sooner if the returns are all received, the state auditor, state treasurer, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state, who is secretary of the board, shall make out and file in his office a statement of the canvass and transmit a copy to the governor.

History: En. Sec. 186, Ch. 368, L. 1969.

Cross-References

Board transferred to office of secretary of state, sec. 82A-2102.

23-4017. Messenger may be sent for returns. If the returns from all counties have not been received five (5) days before the meeting of the board of state canvassers, the secretary of state shall immediately send a messenger to the registrar of each delinquent county. The registrar shall furnish the messenger with a certified copy of the statement required by section 23-4012.

History: En. Sec. 187, Ch. 368, L. 1969.

23-4018. Governor to issue commissions. Upon receipt of the statement required by section 23-4016, the governor shall issue commissions to the persons elected. If the governor has been elected to succeed himself, the secretary of state shall issue the commission.

History: En. Sec. 188, Ch. 386, L. 1969.

23-4019. Defect in form of returns to be disregarded. No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

History: En. Sec. 189, Ch. 368, L. 1969.

CHAPTER 41

RECOUNTS

Section

- 23-4101. Recount of votes, order for—application, contents and time for making—hearing—determination by court.
- 23-4102. Recount limited to precincts and offices specified in order.
- 23-4103. Conditions under which recount to be made.
- 23-4104. Failure to comply with provisions for counting votes, presumption of incorrectness from.
- 23-4105. Ordering in another judge—court not divested of jurisdiction by failure to hear application within prescribed time.
- 23-4106. Limitation of recount to certain precincts.
- 23-4107. Deposit of expense of recount—disposition—compensation of canvassing officials.
- 23-4108. Procedure when more than one application for recount made.
- 23-4109. Manner of recounting ballots.
- 23-4110. Service of copy of application on candidate originally found to be elected—hearing.
- 23-4111. Sealing recounted ballots.
- 23-4112. Certificates of election, effect of recount on.
- 23-4113. Determining total vote cast for all candidates for an office.
- 23-4114. County recount board, board of county commissioners as—absent and disqualified members—clerk.
- 23-4115. Meeting of board when recount requested.
- 23-4116. Persons entitled to appear at recount—opening and recount of ballots.
- 23-4117. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination.
- 23-4118. Reconvening state board of canvassers—re-canvass by state board—corrected abstract of votes—new certificate of election or nomination.
- 23-4119. Tie vote after recount.
- 23-4120. Procedure upon tie vote for United States representative—supreme court justice—district court judge—legislator.
- 23-4121. Procedure upon tie vote for state executive officers—county officers other than county commissioner—township officers—commissioners.
- 23-4122. Expenses of recount.

23-4101. Recount of votes, order for—application, contents and time for making—hearing—determination by court. (1) Within five (5) days after the canvass of election returns, an unsuccessful candidate for any public office at a general, special, or city election may apply to the district court of the county where the election was held for an order directing the canvassing body to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within five (5) days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant were not correctly counted, he shall order the board of county canvassers to assemble within five (5) days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

History: En. Sec. 190, Ch. 368, L. 1969.

Cross-References

Application of Montana Rules of Civil Procedure to recount proceedings, see M. R. Civ. P., Rule 81(a), Table A.

Salaries withheld pending contests, secs. 59-508, 59-509.

Application Timely

Where the board was compelled by writ of mandate to reconvene by the supreme court and correct its findings with relation to two candidates for district judge, the application filed within five days after the corrected canvass was timely. *State ex rel. Riley v. District Court*, 103 M 576, 586, 64 P 2d 115.

Candidate for District Judge

Any unsuccessful candidate, including a candidate for the office of district judge, may apply to the district court for a recount. *State ex rel. Riley v. District Court*, 103 M 576, 580, 64 P 2d 115.

Candidates for Legislature

Recount statutes apply to candidates for the state senate and house of representatives. *State ex rel. Ainsworth v. District Court*, 107 M 370, 372, 86 P 2d 5.

Courts cannot try contests for seats in the legislature or decide issues involved in such contests, but mandamus lies to compel the court to perform the duty specially imposed upon it by recount statutes, the election certificate does not ensure acceptance of a candidate as a member of either house, but merely furnishes prima facie evidence that the majority of voters voted for him. *State ex rel. Ainsworth v. District Court*, 107 M 370, 376, 86 P 2d 5.

Function and Jurisdiction of Court

District court committed error in dismissing the application for a recount on the ground that applicant, convicted of a felony in federal court, lost his citizenship. *State ex rel. Stone v. District Court*, 103 M 515, 519, 63 P 2d 147.

The court could proceed in any suitable manner or mode most conformable "to the spirit" of the code in the absence of specific direction as to how proceedings shall be conducted, and was within its jurisdiction in directing canvassers' attention to sections of the codes covering points in dispute. *State ex rel. Riley v. District Court*, 103 M 576, 587, 64 P 2d 115. (But see *State ex rel. Peterson v. District Court*, 107 M 482, 488, 86 P 2d 403, below.)

A recount of ballots is not made in the presence of the district judge ordering it; in acting, the board is not required to ask the advice of the judge as to whether ballots are or are not properly marked, and he may not give such advice; the board is in duty bound to "hear all, consider all, and then decide." *State ex rel. Peterson v. District Court*, 107 M 482, 486, 86 P 2d 403.

The rule that district courts may not advise boards of county canvassers on questions arising on a recount of ballots as to the legality or illegality of ballots cast, etc., applies also to the supreme court on application for extraordinary relief by way of writs, and it cannot control the actions of such boards indirectly by directions or suggestions to district courts. (If *State ex rel. Riley v. District Court*, 103 M 576, 64 P 2d 115, be open to a contrary construction it is to that extent overruled.) *State ex rel. Peterson v. District Court*, 107 M 482, 488, 86 P 2d 403.

The law relating to proceedings for election recounts specifically divides the functions of the court and the canvassing board. The court determines the grounds of and necessity for a recount and orders it done. The board is entrusted with the duty of making the recount, just as the judges and clerks of election are entrusted with the duty of making the count and certifying thereto in the first place. State ex rel. Peterson v. District Court, 107 M 482, 485, 86 P 2d 403.

Grounds Sufficient

Where application for writ of supervisory control set forth that the votes were not correctly counted, such ground was sufficient to justify the court in finding that the votes "might not" have been correctly counted, and writ accordingly issued directing respondents to order the recount. State ex rel. Thomas v. District Court, 116 M 510, 511, 154 P 2d 980.

Purpose of Act

The sole purpose of the recount statutes is to determine, in a doubtful case, whether the official canvass of the vote was correct, and where the office of state senator or representative is concerned, the election certificate does not ensure one's acceptance as a member of either house, nor affect the ultimate right to the office, nor can the recount infringe upon the assembly's right to judge of the elections, returns and qualifications of its members in contravention of section 9, article V of the constitution. State ex rel. Ains-

worth v. District Court, 107 M 370, 372, 86 P 2d 5.

Recount Proceeding Not Election Contest

A proceeding to obtain a recount of votes is in no sense of the word an election contest, it is absolutely independent of the law relating to contesting of elections and either or both remedies are available. State ex rel. Peterson v. District Court, 107 M 482, 484, 86 P 2d 403.

Successive Recounts

Where an unsuccessful candidate for sheriff obtained a recount and was declared elected, and his opponent, the former successful but then unsuccessful candidate also asked for and was granted a recount, on application for a writ of supervisory control, the five-day limitation commenced to run from the time the board of canvassers announced the result of the first recount, and the application coming within that time, the court had jurisdiction to grant the second recount. State ex rel. Peterson v. District Court, 107 M 482, 485, 86 P 2d 403.

Wrongful Canvass

Recount statutes do not afford a legal remedy for an alleged wrongful canvass by a county canvassing board, and therefore does not defeat the right of a citizen to compel proper performance of their duty by writ of mandate. State ex rel. Lynch v. Batani, 103 M 353, 358, 62 P 2d 565.

DECISIONS UNDER FORMER LAW

Constitutionality

Former chapter on recounts was held constitutional as to sufficiency of title as

to due process of law. State ex rel. Riley v. District Court, 103 M 576, 584, 586, 64 P 2d 115.

23-4102. Recount limited to precincts and offices specified in order. The board of canvassers shall recount votes only in those precincts and for those offices specified in the court order.

History: En. Sec. 191, Ch. 368, L. 1969.

23-4103. Conditions under which recount to be made. A recount shall be made under any of the following conditions.

(1) If a candidate other than for the office of district judge is defeated by a margin not exceeding one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total votes cast or by a margin not exceeding ten (10) votes, whichever is greater, he may within five (5) days after the official canvass file with the registrar a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate is defeated for the office of district judge or an office voted on in more than one (1) county by a margin not exceeding

one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total votes cast for all candidates for the same position, he may within five (5) days after the official canvass file a petition with the secretary of state as set forth in subsection (1) of this section. The secretary of state shall immediately notify each registrar whose county includes any precincts which voted for the same office by registered mail and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of the state is decided by a margin not exceeding one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total votes cast for and against the question, a petition as set forth in subsection (1) of this section may be filed with the secretary of state. This petition shall:

(a) Be signed by not less than one hundred (100) electors of the state representing at least five (5) counties of the state and be filed within five (5) days after the official canvass;

(b) The secretary of state shall immediately notify each registrar by registered mail of the filing of the petition and a recount shall be conducted in all precincts in each county.

(4) If there is a tie vote, the board making the canvass shall certify the vote to the registrar if the election took place only in one (1) county and to the secretary of state for other elections. The registrar or secretary of state shall proceed as if a petition for recount had been filed under this act. If a tie exists after the recount, the tie shall be resolved as provided by law.

History: En. Sec. 192, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Clerk of District Court

The provisions of the constitution, fixing the terms of judicial officers, are exclusive, and vacancies occur by operation of law upon the expiration of the terms designated, even where the people fail to elect their successors; hence, if, by reason of a tie vote, there is a failure to elect the successor of a clerk of a district court upon the expiration of the incumbent's term, there is a vacancy which the county commissioners are authorized to fill by appointment. State ex rel. Jones v. Foster, 39 M 583, 592, 104 P 860. See also State ex rel. Paterson v. Lentz, 50 M 322, 336, 146 P 932.

If there is a clause in the constitution providing that an officer shall hold for a definite term and until his successor is elected and qualified, and the people fail to elect his successor, there is no vacancy, and he is entitled to hold over until the people have chosen his successor in the usual way; but, in the case of judicial

officers, whose terms end at the expiration of a definitely fixed period, the words "and until his successor is elected and qualified," refer to those officers only who were first elected after the adoption of the constitution; they have no application to those chosen after such first election. State ex rel. Jones v. Foster, 39 M 583, 586, 104 P 860.

County School Superintendent

Former chapter governing proceedings on tie vote did not in terms declare that a vacancy in office shall occur when there has been no election to the office by reason of a tie vote. In so far as it related to officers named in the constitution (county school superintendent) and the authority of the county commissioners to fill vacancies therein, it was invalid. State ex rel. Chenoweth v. Acton, 31 M 37, 40, 77 P 299. See State ex rel. Jones v. Foster, 39 M 583, 591, 104 P 860.

23-4104. Failure to comply with provisions for counting votes, presumption of incorrectness from. If it appears from a verified application that the election judges or clerks failed to comply with the provision of

section 23-4003, that is sufficient cause for believing that the election judges and clerks did not correctly ascertain the number of votes cast for the applicant.

History: En. Sec. 193, Ch. 368, L. 1969.

23-4105. Ordering in another judge—court not divested of jurisdiction by failure to hear application within prescribed time. (1) If the judge of the district court of the county in which the election is held is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time, but shall retain jurisdiction until the cause is finally determined and the final court is made by the board of county canvassers.

History: En. Sec. 194, Ch. 368, L. 1969.

Jurisdiction Retained

The jurisdiction of the district court before which an application for a recount of the votes is filed does not cease when it orders the board to reconvene and re-

canvass the votes, but it retains jurisdiction of the proceeding until completion of the canvass, i. e., until the court is advised thereof. State ex rel. Riley v. District Court, 103 M 576, 587, 588, 64 P 2d 115.

23-4106. Limitation of recount to certain precincts. (1) If the application asks for a recount in more than one (1) precinct, but there are not sufficient grounds for a recount in all precincts, the court shall order a recount only in the precincts for which sufficient grounds are stated and shown.

History: En. Sec. 195, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-4107. Deposit of expense of recount—disposition—compensation of canvassing officials. (1) The court in its order shall determine the probable expense of making the recount and the applicant or applicants asking for the recount shall deposit with the board the amount determined in cash.

(2) If the recount shows that the applicant or applicants have been elected to the office, the deposit of each applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess, but if the expense is less than the cost the difference shall be refunded to the applicant.

(4) Members of the canvassing board and their clerks shall be compensated for their time spent in canvassing.

History: En. Sec. 196, Ch. 368, L. 1969.

23-4108. Procedure when more than one application for recount made. If more than one (1) candidate makes application for a recount, the court may consider the applications together. The court may make separate or

joint orders on the applications and apportion the expenses between the applicants.

History: En. Sec. 197, Ch. 368, L. 1969.

23-4109. Manner of recounting ballots. The board of canvassers in recounting the ballots shall count the votes cast, at the same time, in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:

(1) The registrar shall produce, unopened, unless it is necessary for the registrar to open the package or envelope to secure election materials which have been sealed in the wrong envelope or package, the sealed package or envelope received from the election judges of the precinct, or precincts, in which a recount is ordered containing all ballots voted in the precinct or precincts;

(2) A member of the board of county canvassers shall open the sealed package or envelope in the presence of the other members, the registrar, and the applicant or applicants seeking the recount;

(3) A member of the board shall then remove the ballots from the package or envelope in the presence of the applicant or applicants seeking the recount and the candidate or candidates who received the highest number of votes by the first canvass;

(4) One (1) of the members of the board, in the presence and view of the candidates and one (1) other board member, shall read each ballot aloud. As the ballots are read, two (2) clerks shall write the votes cast for each person in each precinct at full length, on previously prepared tally sheets showing the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct;

(5) At the completion of the recount, the tally sheets shall be compared, their correctness ascertained, and the total number of votes cast for each candidate determined;

(6) If the recount shows the votes for any applicant are more or less than the number shown upon the official returns, the clerk of the board of canvassers shall correct the original returns to state the number of votes ascertained by the recount;

(7) The board of canvassers shall direct the clerk to enter the result of the election as determined by the recount on the board records and the clerk shall make out and deliver a certificate of election which conforms to the result of the recount.

History: En. Sec. 198, Ch. 368, L. 1969.

23-4110. Service of copy of application on candidate originally found to be elected—hearing. The candidate found to be elected as a result of the original or first canvass shall be served with a copy of the application for recount. He shall be given an opportunity to be heard and shall be permitted to be present and to be represented at any recount ordered.

History: En. Sec. 199, Ch. 368, L. 1969.

23-4111. Sealing recounted ballots. When the recount in a precinct has been finished, the ballots shall again be sealed in the same package

or envelope in the presence of the registrar and the members of the board of canvassers and shall be delivered to the registrar for custody.

History: En. Sec. 200, Ch. 368, L. 1969.

23-4112. Certificates of election, effect of recount on. If the recount shows that the person who received the certificate of election according to section 23-4014 did not receive the highest number of votes, the registrar shall issue a new certificate to the person receiving the highest number pursuant to the recount and the first certificate is void. The person receiving the second certificate shall be elected to the office.

History: En. Sec. 201, Ch. 368, L. 1969.

23-4113. Determining total vote cast for all candidates for an office. When an elector may vote for two (2) or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: En. Sec. 202, Ch. 368, L. 1969.

23-4114. County recount board, board of county commissioners as—absent and disqualified members—clerk. (1) The county recount board shall always consist of three (3) acting members.

(2) The county recount board is the board of county commissioners.

(3) If one (1) or more of the commissioners cannot attend when the board meets, his place shall be filled by a county officer in the following order of appointment: the treasurer, the assessor, the sheriff, the clerk of court.

(4) If a member of the recount board was a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The registrar is clerk of the recount board, and the board may hire additional clerks as needed.

History: En. Sec. 203, Ch. 368, L. 1969.

23-4115. Meeting of board when recount requested. (1) Immediately upon receiving an application for a recount or notice from the secretary of state that an application has been filed with him, the registrar shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the commissioners without undue delay but not later than five (5) days after receiving notice from the registrar.

History: En. Sec. 204, Ch. 368, L. 1969.

23-4116. Persons entitled to appear at recount—opening and recount of ballots. (1) Each candidate involved in a recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(2) If the recount is upon a referred or submitted question, one (1) qualified elector favoring each side of the question may be present and represent his side.

(3) The registrar shall produce, unopened, the sealed package or envelope received from the election judges in each election precinct in the county.

(4) The recount shall proceed as provided in section 23-4109 and as expeditiously as possible until completed.

History: En. Sec. 205, Ch. 368, L. 1969.

23-4117. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination.

(1) Immediately after the recount the county recount board shall certify the result.

(2) At least two (2) members of the board shall sign the certificate and it shall be attested to under seal by the registrar.

(3) The certificate shall set forth in substance the proceedings of the board and appearance of any candidates or representatives, and it shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made, nomination, position, or question involved, and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for an office, nomination, position, or question voted upon in more than one (1) county or for judge of the district court, the certificate shall be made in duplicate. One (1) copy shall be transmitted immediately to the secretary of state by registered mail.

(5) If the recount relates to an office, nomination, position, or question voted upon in only one (1) county, or part of a single county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(a) If the corrected abstract shows no change in the result, no further action shall be taken.

(b) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated.

History: En. Sec. 206, Ch. 368, L. 1969.

23-4118. Reconvening state board of canvassers—recanvass by state board—corrected abstract of votes—new certificate of election or nomination. (1) When the secretary of state receives certificates from all county recount boards, he shall file them, and fix a time and place as soon as possible for reconvening the state board of canvassers, and shall notify the members.

(2) The state board of canvassers shall recanvass the official returns on the office, nomination, position or question, as corrected by the certificates and make a new and corrected abstract of the votes cast.

(a) If the corrected abstract shows no change in the results, no further action shall be taken.

(b) If there is a change in the results, a new certificate of election or

nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

History: En. Sec. 207, Ch. 368, L. 1969.

23-4119. Tie vote after recount. If the recount shows a tie vote and it cannot be determined who has been nominated or elected, the office or position shall be filled as provided by sections 23-4120 and 23-4121.

History: En. Sec. 208, Ch. 368, L. 1969.

23-4120. Procedure upon tie vote for United States representative—supreme court justice—district court judge—legislator. (1) If there is a tie vote for United States representative, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

(2) If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislative assembly the secretary of state shall send a certified statement to the governor showing the vote cast for each person, and the governor shall appoint an eligible person to hold office.

History: En. Sec. 209, Ch. 368, L. 1969.

23-4121. Procedure upon tie vote for state executive officers—county officers other than county commissioner—township officers—commissioners.

(1) If there is a tie vote for governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the legislative assembly, at its next regular session, shall elect a person to fill the office by joint ballot of the two (2) houses.

(2) If there is a tie vote for clerk of the district court, county attorney, any county officer except county commissioner, or for a township officer, the commissioners shall appoint an eligible person as in case of other vacancies in the office.

(3) If there is a tie vote for commissioner, the senior district judge shall appoint an eligible person to fill the office as in other cases of vacancy.

(4) If there is a tie vote for state officers, the secretary of state shall transmit a certified copy of the statement to the legislative assembly showing the votes cast for the two (2) or more persons having an equal and the highest number of votes.

History: En. Sec. 210, Ch. 368, L. 1969.

23-4122. Expenses of recount. The expense of the recount is a county charge. Expenses of the secretary of state and state board of canvassers are a state charge.

History: En. Sec. 211, Ch. 368, L. 1969.

CHAPTER 42

CONTESTS OF BOND ELECTIONS

Section

23-4201. Grounds for challenge.

23-4202. Designation of time and place of hearing—citation—hearing and determination of issues.

23-4201. Grounds for challenge. (1) Any elector qualified to vote in a bond election of a county, city, or of any political subdivision of either may contest a bond election, for any of the following causes:

(a) That the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(b) That any official charged with a duty under this act, failed to perform that duty;

(c) That in conducting the election, any official charged with a duty under this act, violated any of the provisions of this act relating to bond elections;

(d) That electors qualified to vote in the election under the provisions of the constitutions of Montana and the United States were not given opportunity to vote in the election;

(e) That electors not qualified to vote in the election under the provisions of the constitutions of Montana and the United States were permitted to vote in the election.

(2) Within sixty (60) days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

History: En. Sec. 212, Ch. 368, L. 1969;
amd. Sec. 6, Ch. 158, L. 1971.

(d) and (e) to subsection (1); and
changed the filing time specified in sub-
section (2) from five days to sixty days
after the election.

Amendments

The 1971 amendment added subdivisions

23-4202. Designation of time and place of hearing—citation—hearing and determination of issues. (1) Within five (5) days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order, and shall serve the citation immediately upon the defendant either:

(a) Personally, or

(b) If the party cannot be found, by leaving a copy at the house where he last resided.

(3) The court shall meet at the time and place designated to determine the contested election and shall have all the powers necessary to the determination thereof.

(4) The court shall be governed by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within ten (10) days after submission thereof, the court shall file its findings of fact and conclusions of law, and immediately shall pronounce judgment in the premises, either confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

History: En. Sec. 213, Ch. 368, L. 1969.

CHAPTER 43

PRESIDENTIAL ELECTORS

Section

- 23-4301. Election of electors, when chosen and number.
- 23-4302. Nomination of electors—ballot—votes.
- 23-4303. Returns—lists of electors elected.
- 23-4304. Meeting and voting of electors.
- 23-4305. Lists of persons voted for.
- 23-4306. Compensation of electors.
- 23-4307. Vacancy, how filled.

23-4301. Election of electors, when chosen and number. On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected there shall be elected as many electors for president and vice-president of the United States as are allocated to this state.

History: En. Sec. 214, Ch. 368, L. 1969.

23-4302. Nomination of electors — ballot — votes. (1) Each political party shall nominate presidential electors for this state and file with the secretary of state certificates of nomination for these candidates at the time and in the manner and number provided by law.

(2) The secretary of state shall certify to the registrars the names of the candidates for president and vice-president of the several political parties, which shall be printed on the ballot.

(3) The names of candidates for electors of president and vice-president shall not be printed upon the ballot.

(4) The votes cast for candidates for president and vice-president of each political party shall be counted for the candidates for presidential electors of the political party whose names have been filed with the secretary of state.

History: En. Sec. 215, Ch. 368, L. 1969.

Nomination for Public Office

The nomination for presidential elec-

tors is a nomination for public office. State ex rel. Wheeler v. Stewart, 71 M 358, 363, 230 P 366.

23-4303. Returns—lists of electors elected. (1) The votes for candidates for president and vice-president shall be given, received, returned and canvassed as the votes are given, returned, and canvassed for candidates for Congress.

(2) The secretary of state shall prepare three (3) lists of names of electors elected and affix the seal of the state to the lists.

(3) The lists shall be signed by the governor and secretary of state and by the latter delivered to the college of electors at the hour of their meeting.

History: En. Sec. 216, Ch. 368, L. 1969.

23-4304. Meeting and voting of electors. (1) The electors shall meet in Helena at 2 p. m. on the first Monday after the second Wednesday in December following their election.

(2) The electors shall vote by separate ballots for one (1) person for president and one (1) for vice-president of the United States.

History: En. Sec. 217, Ch. 368, L. 1969.

Extension of Time Unconstitutional

Since, under prior section and the federal act (U.S.C., Tit. 3, sec. 5, enacted pursuant to section 1, article II of the federal constitution), the presidential electors must meet on the first Monday after the second Wednesday in December follow-

ing their election, the legislature could not, by enacting ch. 101, Laws 1943 (since repealed), constitutionally extend the time for depositing military ballots for the general election for seven weeks beyond the Tuesday after the first Monday in November. *Maddox v. Board of State Canvassers*, 116 M 217, 224, 149 P 2d 112.

23-4305. Lists of persons voted for. (1) The electors shall make lists of the persons voted for as president and vice-president, indicate the number of votes for each, certify, seal, and transmit the lists as prescribed by laws of the United States.

History: En. Sec. 218, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-4306. Compensation of electors. Electors shall receive the same pay and mileage allowed members of the legislative assembly. Payments shall be certified by the secretary of state and paid by the state auditor from the state general fund.

History: En. Sec. 219, Ch. 368, L. 1969.

23-4307. Vacancy, how filled. If a vacancy occurs, the electors present shall elect a citizen of the state to fill the vacancy.

History: En. Sec. 220, Ch. 368, L. 1969.

CHAPTER 44

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

Section

- 23-4401. Election of United States senators and representatives—for full term and to fill vacancies.
- 23-4402. Writs of election to fill vacancy.
- 23-4403. Certificates issued by governor.
- 23-4404. Residence required for election or appointment to Congress.

23-4401. Election of United States senators and representatives—for full term and to fill vacancies. (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) If a vacancy occurs for senator, or United States representative, an election to fill the vacancy shall be held at the next general election. If an election is invalid or not held at that time, the election shall be at the second succeeding general election.

(3) Nominations and elections shall be as provided by law for governor.

History: En. Sec. 221, Ch. 368, L. 1969.

23-4402. Writs of election to fill vacancy. If a vacancy occurs in the office of United States senator or representative, the governor shall issue a writ of election to fill the vacancy. The governor may make a temporary appointment to fill the vacancy until the election.

History: En. Sec. 222, Ch. 368, L. 1969.

23-4403. Certificates issued by governor. Upon receipt of the statement required by section 23-4016, the governor shall send a certificate of election to each person elected.

History: En. Sec. 223, Ch. 368, L. 1969.

23-4404. Residence required for election or appointment to Congress. A person who has not resided in this state at least one (1) year prior to his election or appointment is not eligible for the office of United States senator or representative.

History: En. Sec. 224, Ch. 368, L. 1969.

CHAPTER 45

NONPARTISAN NOMINATION AND ELECTION OF JUDGES

Section

- 23-4501. Judicial offices as separate and independent offices for election purposes.
- 23-4502. **Nominations.**
- 23-4503. Declarations for nomination—contents—fee.
- 23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation.
- 23-4505. Primary ballots—preparation and distribution.
- 23-4506. Judicial primary ballots.
- 23-4507. Separate counting and canvassing of judicial ballots—application of general laws.
- 23-4508. Nominations—placing names on ballots.
- 23-4509. Tie vote, how decided.
- 23-4510. Vacancies among nominees after nomination and before general election, how filled.
- 23-4511. Unlawful for political party to endorse judicial candidate.

23-4501. Judicial offices as separate and independent offices for election purposes. (1) Each vacancy for associate justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the four (4) associate justices and certify these numbers to the office of the secretary of state not less than one hundred eighty (180) days before a primary nominating election.

(2) Each judicial office in a district which has more than one (1) district judge is a separate and independent office for election purposes.

History: En. Sec. 225, Ch. 368, L. 1969.

Purpose and Construction of Act

Purpose of prior act was to eliminate, so far as possible, the selection of judges from partisan politics. The word "candi-

date" as used in act was not to receive a different construction from that as used in the general primary law. The act was to be construed in *pari materia* with the primary and general election laws. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

23-4502. Nominations. Candidates for the supreme court or district court shall be nominated according to primary election laws so far as they are consistent with the provisions of this chapter.

History: En. Sec. 226, Ch. 368, L. 1969.

23-4503. Declarations for nomination — contents — fee. (1) Judicial candidates shall file declarations for nomination as required by the primary election laws in a form specified by the secretary of state.

(2) Declarations for nomination as associate justice of the supreme court shall designate the number of the office. A person can make only one (1) designation.

(3) Candidates for nomination as district judge in a district having more than one (1) judge shall specify the number of the office. His candidacy is limited to the number specified.

(4) Declarations shall not indicate political affiliation. The candidate shall not state in his declaration any principles or measures he advocates nor any slogans.

(5) Each person filing a declaration shall remit the fee prescribed by law for the position he seeks. Declarations for justice of the supreme court and district court judge shall be filed with the secretary of state.

History: En. Sec. 227, Ch. 368, L. 1969.

23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation. (1) On receipt of a declaration, the secretary of state shall make entries in the "Register of Candidates for Nomination" on a page different from entries made for district candidates of political parties.

(2) The secretary of state shall separately arrange, certify, and file the names of judicial candidates, and certify to each registrar the names to be placed on the primary ballot at the same time, and in the same way, that other candidates are certified.

(3) The certificates shall show the names of candidates and number of the judicial office for each. The list shall be separate from lists of candidates appearing under political headings.

History: En. Sec. 228, Ch. 368, L. 1969.

23-4505. Primary ballots — preparation and distribution. (1) The registrars shall arrange, prepare, and distribute primary ballots for judicial offices designated "Judicial Primary Ballots." They shall be arranged as other primary ballots and be without political designation.

(2) The number of judicial primary ballots and sample ballots furnished shall be the same as other primary ballots.

History: En. Sec. 229, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Write-in Candidate

The prior Nonpartisan Judiciary Act did not restrict electors to the privilege of voting only for candidates whose names appeared on the primary judicial ballot,

but, though the act was silent as to their right to write in the name of a qualified person to judicial office, they could do so. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

23-4506. Judicial primary ballots. (1) The "Judicial Primary Ballot" shall be furnished to electors in the same manner as other primary ballots.

(2) The number of the judicial primary ballot shall correspond to the number of the elector's regular ballot.

(3) Different terms of office for the same position shall be considered separate offices.

History: En. Sec. 230, Ch. 368, L. 1969.

23-4507. Separate counting and canvassing of judicial ballots—application of general laws. (1) After closing the polls, the election officers shall separately count and canvass judicial ballots, and record and certify them, showing the number of votes cast for each person.

(2) Judicial ballots, stubs, and unused ballots shall be disposed of in the same manner as other ballots, stubs and unused ballots. Returns shall be made as provided by law.

History: En. Sec. 231, Ch. 368, L. 1969.

23-4508. Nominations—placing names on ballots. (1) Candidates for nomination equal to twice the number to be elected at the general election who shall receive the highest number of votes cast at the primary, or if the number of candidates is not more than twice the number to be elected then all candidates, are nominees for the office.

(2) Candidates who received the highest vote in the primary shall have their names printed on the official ballot for the general election.

(3) No candidate shall have his name on the judicial ballot for the general election unless he was a successful candidate at the primary election.

History: En. Sec. 232, Ch. 368, L. 1969.

23-4509. Tie vote, how decided. (1) In case of a tie vote, the candidates shall appear and cast lots before the secretary of state on the fifth day after the vote is officially canvassed.

(2) If a candidate fails to appear in person or by proxy in writing before 12 noon of the day appointed, the secretary of state shall by lot determine the candidate whose name will be printed on the official ballot.

History: En. Sec. 233, Ch. 368, L. 1969.

23-4510. Vacancies among nominees after nomination and before general election, how filled. (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If after the primary and before the general election there is no person able or entitled to the office or there are not enough candidates to fill the offices, the governor shall certify to the secretary of state the names of persons qualified for the office equal to twice the number to be elected. The names of those persons nominated by the governor shall be printed on the official ballot.

(3) Nominations made by the governor are not filed too late if filed within ten (10) days after the vacancy occurs. If the ballots have already been printed, stickers may be used to place the names on the ballot.

History: En. Sec. 234, Ch. 368, L. 1969.

23-4511. Unlawful for political party to endorse judicial candidate. A political party which endorses a candidate for justice of the supreme court or district court judge, a person who participates in an endorsement by a political party, or a person who acts on behalf of a political party in endorsing a judicial candidate is guilty of a misdemeanor.

History: En. Sec. 235, Ch. 368, L. 1969.

CHAPTER 46

CONVENTIONS TO RATIFY AMENDMENTS TO CONSTITUTION OF THE UNITED STATES

Section

- 23-4601. Convention for ratification of amendments to United States constitution.
- 23-4602. Delegates to constitutional convention.
- 23-4603. Nomination of delegates.
- 23-4604. Determination of election results.
- 23-4605. Ballot form.
- 23-4606. Time for convention of delegates.
- 23-4607. Quorum—officers—procedure—qualifications.
- 23-4608. Compensation of delegates and officers.
- 23-4609. Certificate of result—transmission to secretary of state of United States.
- 23-4610. Qualifications of petitioners and electors.
- 23-4611. Federal acts to supersede state provisions concerning amendments.

23-4601. Convention for ratification of amendments to United States constitution. If Congress proposes an amendment to the constitution of the United States to be ratified by state convention, a convention shall be held.

History: En. Sec. 236, Ch. 368, L. 1969.

23-4602. Delegates to constitutional convention. (1) The number of convention delegates shall be equal to the number of members in the legislative assembly. Each district shall have delegates equal to the number of members it is entitled to in the legislative assembly.

(2) Delegates shall be elected at the next primary or general election after Congress has proposed the amendment, or at a special election called by the governor.

(3) Except as otherwise provided in sections 23-4601 through 23-4611, the election shall be in accordance with the laws for the election of members of the legislative assembly.

History: En. Sec. 237, Ch. 368, L. 1969.

23-4603. Nomination of delegates. (1) Nominations for the office of delegate shall be by petition signed by not less than one hundred (100) voters of the district.

(2) Nominations shall be without political designation but shall be as "in favor of" or "opposed to" ratification of the proposed amendment.

(3) Petitions and acceptances shall be filed not less than thirty (30) days prior to the election.

History: En. Sec. 238, Ch. 368, L. 1969.

23-4604. Determination of election results. The results of the election are determined as follows:

(1) The votes cast for each candidate "in favor of" ratification, and the total votes cast for all candidates "in favor of" ratification and the votes cast for each candidate "opposed to" and the total votes cast for all candidates "opposed to" ratification shall be ascertained;

(2) Candidates receiving the highest number of votes equal to the number of delegates to be elected from the side receiving the greater number of votes are elected.

History: En. Sec. 239, Ch. 368, L. 1969.

23-4605. Ballot form. The official ballot form shall be prescribed by the secretary of state.

History: En. Sec. 240, Ch. 368, L. 1969.

23-4606. Time for convention of delegates. Delegates shall meet at the state capitol on the first Monday in the month following the election at 10 a. m. and constitute a convention to act upon the proposed amendment.

History: En. Sec. 241, Ch. 368, L. 1969.

23-4607. Quorum—officers—procedure—qualifications. A majority of the total number of delegates constitutes a quorum. The convention may choose a president, secretary, and other necessary officers; make rules governing the procedure of the convention; and shall judge the qualifications and election of its members.

History: En. Sec. 242, Ch. 368, L. 1969.

23-4608. Compensation of delegates and officers. Each delegate shall receive mileage and per diem as provided by law for members of the legislative assembly. The secretary and other officers shall receive compensation fixed by the convention.

History: En. Sec. 243, Ch. 368, L. 1969.

23-4609. Certificate of result—transmission to secretary of state of United States. When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States.

History: En. Sec. 244, Ch. 368, L. 1969.

23-4610. Qualifications of petitioners and electors. Persons entitled to petition for nomination and vote at the election are determined by laws on registration.

History: En. Sec. 245, Ch. 368, L. 1969.

23-4611. Federal acts to supersede state provisions concerning amendments. If Congress prescribes how the convention shall be constituted and held by resolution or statute, sections 23-4601 through 23-4610 are inoperative and the convention shall be constituted and held as Congress directs. All state officers are directed to take action to constitute the convention as authorized by Congress and act as if acting under state statute.

History: En. Sec. 246, Ch. 368, L. 1969.

Repealing Clause

Section 248 of Ch. 368, Laws 1969 read "Sections 23-101 through 23-106, 23-201 through 23-202, 23-301 through 23-311, 23-401 through 23-407, 23-501, 23-501.1, 23-502 through 23-534, 23-601 through 23-604, 23-604.1, 23-604.2, 23-605 through 23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through

23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 23-2206, 23-2301 through 23-2323, 23-2401 through 23-2411, and 23-2501 through 23-2507, R. C. M. 1947 are repealed."

TITLE 24—ELECTRIC LINES CONSTRUCTION

Chapter

1. Regulation, construction of electric light, heat and power lines, 24-107.

CHAPTER 1—REGULATION, CONSTRUCTION OF ELECTRIC LIGHT, HEAT AND POWER LINES

Section

24-107. Guy insulation.

24-107. (2683) Guy insulation. Any guy wire attached to any pole or appliance on which is run, placed, erected, or maintained any wire or cable used to conduct or carry electricity for the purpose of light, heat, or power, or used jointly with telephone, telegraph, or other signal wires, shall be permanently and effectively insulated at all times, by the insertion of at least two (2) strain insulators. The upper of these insulators shall be inserted in the guy so as to be at least six (6) feet in a horizontal line from the pole itself, and the second strain insulator shall be inserted in the guy so as to be not less than eight (8) feet in a vertical line from the surface of the ground. In short guys in which the two (2) insulators are required, and which will be located at the same point or near each other, two (2) insulators may be coupled in series and put into the guy together. All strain insulators shall be so constructed and maintained that the guy wire or guy cable holding the insulator in place shall interlock in case of failure or breakage thereof. A single fiberglass strain insulator may be substituted and used in lieu of the two (2) strain insulators. Such fiberglass strain insulators must have mechanical strength equal to or greater than the guy strand used and must have a wet flash over rating equal to the highest line to line voltage involved in the guying application and must have a dry flash over rating equal to two (2) times the line to line voltage. The above shall not apply to railway electrification, where at least one (1) insulator shall be inserted in each end of every auxiliary cross-span, and one in each auxiliary guy, and provided further, that in accord with the provisions of the national electric safety code, the above shall not apply to lines in rural areas where a common neutral is used and both primary and secondary circuits and also the guys are grounded to said common neutral and said common neutral has at least four (4) ground connections in each mile in addition to each ground connection at individual services.

History: En. Sec. 7, Ch. 171, L. 1917; re-en Sec. 2683, R.C.M. 1921; amd. Sec. 6, Ch. 137, L. 1941; amd. Sec. 1, Ch. 248, L. 1947; amd. Sec. 1, Ch. 344, L. 1971.

Amendments

The 1971 amendment inserted the fifth and sixth sentences, relating to the use of fiberglass insulators.

TITLE 25—FEES AND SALARIES

Chapter

1. Fees of state officers, 25-102.
2. Fees of county officers, 25-210.
3. Fees and salaries of justices of the peace and constables, 25-306.
4. Jurors' and witnesses' fees, 25-401, 25-403, 25-404, 25-409, 25-410.
5. Salaries of state officers, deputies and employees, 25-501, 25-507.1 to 25-507.10.
6. Salaries of county officers, deputies and employees, 25-604, 25-605.

CHAPTER 1—FEES OF STATE OFFICERS

Section

25-102. Fees of secretary of state.

25-102. (145) Fees of secretary of state. The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For each copy of any law, resolution or record or other document or paper on file in his office, except corporate papers, forty cents (\$.40) per folio, or, if the copy is made by any process of reproduction by photographic, photostatic or similar process, the fee shall be fifty cents (\$.50) per page or fraction thereof.

2. to 7. * * * [Same as parent volume.]

8. For filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, five dollars (\$5).

History: Ap. p. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R.C.M. 1921; amd. Sec. 1, Ch. 50, L. 1935; amd. Sec. 1, Ch. 116, L. 1961; amd. Sec.

141, Ch. 300, L. 1967; amd. Sec. 3, Ch. 185, L. 1971. Cal. Pol. C. Sec. 416.

Amendments

The 1971 amendment reduced the fee specified at the end of subdivision 1 from 75¢ to 50¢ per page; and added subdivision 8.

CHAPTER 2—FEES OF COUNTY OFFICERS

Section

25-210. Fees for naturalization.

25-210. (4894) Fees for naturalization. The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, all fees authorized by law. All fees must be accounted for and paid to the county treasurer as provided by section 25-203, and shall be credited to the general fund of the county.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 3146, Rev. C. 1907; re-en. Sec. 4894, R. C. M. 1921; amd. Sec. 1, Ch. 73, L. 1967; amd. Sec. 1, Ch. 171, L. 1969.

Amendments

The 1969 amendment substituted "all fees authorized by law" for "a fee of two dollars and fifty cents (\$2.50); and no

other fee shall be charged for naturalization papers, or for the record thereof."

Effective Date

Section 2 of Ch. 171, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

25-227, 25-228. (4886) Repealed.**Repeal**

Sections 25-227 and 25-228 (Sec. 4605, Pol. C. 1895; Sec. 1, Ch. 81, L. 1919; Secs. 1, 3, Ch. 77, L. 1943; Sec. 1, Ch. 103, L. 1949; Sec. 1, Ch. 131, L. 1951; Sec.

1, Ch. 241, L. 1969), relating to fees allowed sheriffs for the board of prisoners, were repealed by Sec. 4, Ch. 420, Laws 1971. For present law, see sec. 16-2808.

CHAPTER 3—FEES AND SALARIES OF JUSTICES OF THE PEACE AND CONSTABLES

Section

25-306. Salaries of justices of the peace in certain townships—hours—quarters.

25-306. (4929) Salaries of justices of the peace in certain townships—hours—quarters. Justices of the peace in townships having a population of ten thousand (10,000) people, and not exceeding fifteen thousand (15,000) people, shall each receive a salary of four thousand two hundred dollars (\$4,200) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than fifteen thousand (15,000) people, and not exceeding eighteen thousand (18,000) people, shall each receive a salary of four thousand five hundred dollars (\$4,500) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than eighteen thousand (18,000) people, shall each receive a salary of five thousand five hundred dollars (\$5,500) per annum, payable monthly from the county treasury; justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as "miscellaneous fees" by section 25-304; justices of the peace in townships having a population of less than ten thousand (10,000) people shall receive the fees and emoluments provided under existing laws; justices of the peace in townships having a population of ten thousand (10,000) people and upwards shall keep their offices open for business from 9 o'clock a. m. to 12 o'clock noon, and from 1 o'clock p. m. to 5 o'clock p. m. on all judicial days, and at such other hours on judicial days as they may desire; providing, however, the office may be closed from 1 o'clock p. m. to 5 o'clock p. m. on Saturdays and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion, select suitable quarters for such justices and may, in its discretion, pay for same from money in the county treasury.

History: En. Sec. 1, Ch. 84, L. 1917; re-en. Sec. 4929, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1949; amd. Sec. 1, Ch. 51, L. 1953; amd. Sec. 1, Ch. 47, L. 1957; amd. Sec. 3, Ch. 184, L. 1963; amd. Sec. 1, Ch. 198, L. 1969.

annual salaries of justices as follows: in townships of 10,000 to 15,000 people from \$3,400 to \$4,200; in townships of 15,000 to 18,000 people from \$3,600 to \$4,500; in townships of more than 18,000 people from \$4,600 to \$5,500; and in the provision relating to office hours, substituted "noon for "m." after "12 o'clock."

Amendments

The 1969 amendment increased the

CHAPTER 4—JURORS' AND WITNESSES' FEES

Section

25-401. Jurors' fees.

25-403. Compensation of jurors in courts not of record and at coroner's inquests.

25-404. Witnesses' fees.

25-409. Witnesses in courts not of record.

25-410. Witnesses in criminal actions or coroner's inquests.

25-401. (4933) **Jurors' fees.** Grand and trial jurors shall receive twelve dollars (\$12) per day for attendance before any court of record and eight cents (8¢) per mile each way for traveling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1935; amd. Sec. 1, Ch. 9, L. 1945; amd. Sec. 1, Ch. 117, L. 1963; amd. Sec. 1, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased the jurors' fees in courts of record from \$10 to \$12 per day; and made a minor change in style.

25-403. (4935) **Compensation of jurors in courts not of record and at coroner's inquests.** Jurors in courts not of record, in both civil and criminal actions, shall receive seven dollars and fifty cents (\$7.50) per day, but in civil actions the jury must be paid by the party demanding the jury, and must be taxed as costs against the losing party. Jurors in coroner's inquest shall receive for their services the sum of seven dollars and fifty cents (\$7.50) per day.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907; re-en. Sec. 4935, R. C. M. 1921; amd. Sec. 1, Ch. 206, L. 1947; amd. Sec. 1, Ch. 154, L. 1969; amd. Sec. 2, Ch. 332, L. 1971.

Amendments

The 1969 amendment increased jurors' compensation from \$3. to \$5. a day.

The 1971 amendment increased the jurors' fees from \$5.00 to \$7.50 per day.

25-404. (4936) **Witnesses' fees.** For attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions, or commissioners to assess damages or otherwise, for each day, ten dollars (\$10). For mileage in traveling to the place of trial or hearing, each way, for each mile, eight cents (\$.08); provided, however, that no officer of the United States, the state of Montana, or of any county, incorporated city or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceedings, and that no witness shall receive fees in any more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907; re-en. Sec. 4936, R.C.M. 1921; amd. Sec. 2, Ch. 18, L. 1935; amd. Sec. 2, Ch. 117, L. 1963; amd. Sec. 3, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased the witnesses' fees from \$6 to \$10 per day; and made minor changes in style and phraseology.

25-409. (4941) **Witnesses in courts not of record.** Witnesses in courts not of record in civil actions and proceedings shall receive three dollars (\$3) for each day's actual attendance, and seven cents (\$.07) for each mile actually traveled in going from his residence by the usual traveled route to the said court and return.

History: En. Sec. 3, Ch. 48, L. 1903; re-en. Sec. 3186, Rev. C. 1907; re-en. Sec. 4941, R.C.M. 1921; amd. Sec. 3, Ch. 18, L. 1935; amd. Sec. 4, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased witnesses' fees from \$1.50 to \$3 per day; and made a minor change in style.

25-410. (4942) Witnesses in criminal actions or coroner's inquests. Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive three dollars (\$3) per day for actual attendance, and seven cents (\$.07) per mile for each mile actually and necessarily traveled from his place of residence to the said court and return.

History: En. Sec. 4, Ch. 48, L. 1903; re-en. Sec. 3187, Rev. C. 1907; re-en. Sec. 4942, R.C.M. 1921; amd. Sec. 4, Ch. 18, L. 1935; amd. Sec. 5, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased witnesses' fees from \$1.50 to \$3 per day; and made a minor change in style.

CHAPTER 5—SALARIES OF STATE OFFICERS, DEPUTIES AND EMPLOYEES

Section

- 25-501. Salaries of certain elected state officials.
- 25-507.1. Central payroll system for state agencies authorized—state auditor to provide for inclusion of agencies—exceptions.
- 25-507.2. Payroll periods—pay dates—uniformity of dates—dates to be within ten days after close of payroll period.
- 25-507.3. Payroll period not to be changed because of central system except upon sixty days' notice.
- 25-507.4. Payroll roster mandatory—roster of established positions authorized—persons to be included on payroll roster.
- 25-507.5. Payroll roster certifications by appointing powers—reliance on certifications and attendance reports.
- 25-507.6. Duplicate warrants authorized—charge for loss—when considered lost.
- 25-507.7. Designation of person to receive warrants upon employee's death—reissuance of warrant in designated person's name.
- 25-507.8. Creation of state payroll revolving account in state treasury—state auditor to determine disbursements and transfers.
- 25-507.9. Determination of weekly or hourly pay rate.
- 25-507.10. Service charges—use of funds so collected.

25-501. Salaries of certain elected state officials. The annual salaries paid to certain elected officials of the state of Montana shall be as follows:

Governor	\$25,000
Chief justice of the supreme court	\$24,000
Justices of the supreme court, each	\$22,500
Attorney general	\$19,000
State auditor	\$15,000
Superintendent of public instruction	\$17,500
Railroad commissioner	\$14,000
State treasurer	\$15,000
Secretary of state	\$15,000
Clerk of the supreme court	\$11,500

History: En. Sec. 1, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; amd. Sec. 1, Ch. 212, L. 1963; amd. Sec. 1, Ch. 308, L. 1967; amd. Sec. 1, Ch. 323, L. 1969; amd. Sec. 1, Ch. 314, L. 1971.

Amendments

The 1969 amendment substituted "certain" for "various" before "elected officials" and increased annual salaries as follows: chief justice from \$18,500 to \$22,500; justices from \$17,000 to \$21,000; railroad commissioners from \$10,500 to \$11,550; and clerk of the supreme court from \$9,000 to \$11,500.

The 1971 amendment increased the annual salaries of the governor from \$23,250 to \$25,000; of the chief justice from \$22,500 to \$24,000; of the other supreme court justices from \$21,000 to \$22,500; of the attorney general from \$15,500 to \$19,000; of the state auditor from \$10,500 to \$15,000; of the superintendent of public instruction from \$13,750 to \$17,500; of the railroad commissioner from \$11,550 to \$14,000; of the state treasurer from \$10,500 to \$15,000; and of the secretary of state from \$10,500 to \$15,000.

25-507.1. Central payroll system for state agencies authorized—state auditor to provide for inclusion of agencies—exceptions. The state auditor shall install and operate a uniform state central payroll system for all state agencies. The auditor may provide for the orderly inclusion of state agencies into such system, and may make exceptions from the operation thereof for such periods as he determines necessary.

History: En. Sec. 1, Ch. 95, L. 1969. and operation of a state central payroll system.

Title of Act

An act providing for the establishment

25-507.2. Payroll periods—pay dates—uniformity of dates—dates to be within ten days after close of payroll period. The state central payroll system may provide for the fixing of payroll periods and designated days of the month on which salaried employees shall be paid for the preceding payroll period. Such pay date shall be uniform for all employees of each state agency employed in the same geographic area and shall not be more than ten (10) calendar days following the close of the payroll period.

History: En. Sec. 2, Ch. 95, L. 1969.

25-507.3. Payroll period not to be changed because of central system except upon sixty days' notice. The payroll period of employees of a state agency shall not be changed by inclusion of the agency into the state central payroll system, or by any revision or modification of the system, unless notice of the proposed change has been given to each employee, who will be affected by such change in the form and manner prescribed by the state auditor not less than sixty (60) days prior to the effective date of the change.

History: En. Sec. 3, Ch. 95, L. 1969.

25-507.4. Payroll roster mandatory—roster of established positions authorized—persons to be included on payroll roster. The state auditor shall establish and maintain a payroll roster of all persons employed by every state agency and may establish and maintain a roster of all established positions. The payroll roster shall include both merit system and exempt employees, but shall not necessarily include emergency appointees, or the equivalent.

History: En. Sec. 4, Ch. 95, L. 1969.

25-507.5. Payroll roster certifications by appointing powers—reliance on certifications and attendance reports. Each appointing power shall correctly and promptly certify to the state auditor all changes, modifications, additions and deletions to the payroll roster in compliance with all applicable merit service, fiscal, and other pertinent laws, rules, and regulations. The state central payroll system shall disburse or otherwise act in reliance upon all payroll roster certifications and attendance reports certified to the state auditor by the respective appointing powers.

History: En. Sec. 5, Ch. 95, L. 1969.

25-507.6. Duplicate warrants authorized—charge for loss—when considered lost. Upon receipt of proof, satisfactory to the state auditor, that

a payroll warrant issued by the state auditor has been lost or destroyed prior to its delivery to the employee to whom it is payable, the state auditor shall, upon certification by the payee's appointing power, issue a duplicate warrant in payment of the same amount, without requiring a bond from the payee and any loss incurred in connection therewith, shall be charged against the account from which the payment was derived. A payroll warrant shall be considered to have been lost if it has been sent to the payee, but not received by him within a reasonable time, consistent with the policy of prompt payment of employees, or if it has been sent to a state officer or employee for delivery to the payee, or for forwarding to another state officer or employee for such delivery, and has not been received within such reasonable time.

History: En. Sec. 6, Ch. 95, L. 1969.

25-507.7. Designation of person to receive warrants upon employee's death—re-issuance of warrant in designated person's name. Any person now or hereafter employed by the state may file with his appointing power a designation of a person, who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants from the state auditor and on sufficient proof of identity, the state auditor shall re-issue the warrant in the name of the designated person and deliver said warrant to the designated person.

History: En. Sec. 7, Ch. 95, L. 1969.

25-507.8. Creation of state payroll revolving account in state treasury—state auditor to determine disbursements and transfers. An account in the revolving fund of the state treasury is hereby created, to be known as the state payroll revolving account, which account may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld therefrom, pursuant to law. The amount to be disbursed from the state payroll revolving account at any time shall be determined by the state auditor, and on his order, shall be transferred forthwith from the fund, account, and appropriation otherwise properly chargeable therewith, to the state payroll revolving account.

History: En. Sec. 8, Ch. 95, L. 1969.

25-507.9. Determination of weekly or hourly pay rate. When the monthly or annual salary rate payable to an officer or employee of the state has been set by law or otherwise, notwithstanding any other provision of law, the weekly or hourly rate of pay shall be determined by dividing the annual salary by 52 weeks, or 2080 hours.

History: En. Sec. 9, Ch. 95, L. 1969.

25-507.10. Service charges—use of funds so collected. The state auditor may provide for a system of charges for services rendered by the state central payroll system to any department or agency of the state. Funds collected under this section shall be deposited to the credit of a revolving

fund account and expended for the purpose of paying the expenses incurred by the state central payroll system.

History: En. Sec. 10, Ch. 95, L. 1969.

CHAPTER 6—SALARIES OF COUNTY OFFICERS, DEPUTIES AND EMPLOYEES

Section

25-604. County commissioners to fix salaries of deputies—limitations.

25-605. Salaries of certain county officers.

25-604. (4874) County commissioners to fix salaries of deputies—limitations. That the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant mentioned in the preceding section except as herein provided; provided the salary of no deputy or assistant shall be more than ninety per cent (90%) of the salary of the officer under whom such deputy or assistant is serving; except as herein provided; where any deputy or assistant is employed for a period of less than one (1) year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants, except as herein provided; said boards of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to the several county officers a greater or less number of deputies or assistants, than the maximum number allowed by law, when in the judgment of the board of county commissioners such greater or less number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county office; provided that after this act becomes effective the maximum salary rate per month of any deputy or assistant should not be less than the maximum salary allowed in any month of the year immediately previous to the date this act becomes effective. In fixing the compensation allowed the undersheriff the board must fix the same ninety-five per cent (95%) of the salary of the officers under whom such undersheriff is serving; in fixing the compensation allowed the deputy sheriffs the board must fix the same at ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving, except in counties of the first, second, or third class in which the board must fix the same at not less than seventy-five per cent (75%) nor more than ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving; provided, however, that no deputy sheriff presently employed may be paid less than the compensation he is receiving on the effective date of this act.

History: En. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971.

Amendments

The 1971 amendment added to the language following the semicolon in the last sentence the exception and the proviso relating to first, second and third class counties; and made a minor change in phraseology.

25-605. Salaries of certain county officers. The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, coun-

ty assessors, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in section 16-3302, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County		Salary Col. A	Taxable Valuation of County		Salary Col. B
Below	3,000	\$3,060	Below	\$2,000,000	\$3,060
	3,000 to 3,999	\$3,150		\$2,000,000 to 2,999,999	\$3,150
	4,000 to 4,999	\$3,220		3,000,000 to 3,999,999	\$3,220
	5,000 to 5,999	\$3,290		4,000,000 to 4,999,999	\$3,290
	6,000 to 6,999	\$3,370		5,000,000 to 5,999,999	\$3,370
	7,000 to 7,999	\$3,590		6,000,000 to 6,999,999	\$3,590
	8,000 to 8,999	\$3,650		7,000,000 to 7,999,999	\$3,650
	9,000 to 9,999	\$3,740		8,000,000 to 9,999,999	\$3,740
	10,000 to 12,499	\$3,800		10,000,000 to 11,999,999	\$3,800
	12,500 to 14,999	\$3,880		12,000,000 to 13,999,999	\$3,880
	15,000 to 17,499	\$3,960		14,000,000 to 15,999,999	\$3,960
	17,500 to 19,999	\$4,030		16,000,000 to 17,999,999	\$4,030
	20,000 to 24,999	\$4,100		18,000,000 to 19,999,999	\$4,100
	25,000 to 29,999	\$4,170		20,000,000 to 22,499,999	\$4,170
	30,000 to 39,999	\$4,250		22,500,000 to 24,999,999	\$4,250
	40,000 to 49,999	\$4,360		25,000,000 to 29,999,999	\$4,360
	50,000 to 59,999	\$4,510		30,000,000 to 34,999,999	\$4,510
	60,000 to 69,999	\$4,670		35,000,000 to 39,999,999	\$4,670
	70,000 to 79,999	\$4,800		40,000,000 to 44,999,999	\$4,800
	80,000 to 89,999	\$4,950		45,000,000 to 49,999,999	\$4,950
	90,000 to 99,999	\$5,100		50,000,000 to 54,999,999	\$5,100
	100,000 and over	\$5,260		55,000,000 to 59,999,999	\$5,260
				60,000,000 to 64,999,999	\$5,260
				65,000,000 to 69,999,999	\$5,260
				70,000,000 to 74,999,999	\$5,260
				75,000,000 to 79,999,999	\$5,260
				80,000,000 to 84,999,999	\$5,260
				85,000,000 to 89,999,999	\$5,260
				90,000,000 to 94,999,999	\$5,260
				95,000,000 to 99,999,999	\$5,260
				100,000,000 and over	\$5,260

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools and county sheriffs, and county surveyors in counties where county surveyors receive salaries, as provided in section 16-3302, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided, however, that county superintendents of schools and county sheriffs shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of four hundred dollars (\$400) per year.

History: En. Sec. 1, Ch. 150, L. 1945; L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, Ch. 195, L. 1961; amd. Sec. 1, Ch. 216,

L. 1965; amd. Sec. 1, Ch. 231, L. 1967; amd. Sec. 1, Ch. 284, L. 1969; amd. Sec. 1, Ch. 265, L. 1971.

Amendments

The 1969 amendment substituted references to section 16-3302 for references to repealed section 32-303; raised all the salary bases in the schedule; and in the final

paragraph, inserted "and county sheriffs" before "and county surveyors."

The 1971 amendment raised all the salary bases in the schedule; added the last five items in the schedule headed "Taxable Valuation of County"; and inserted "and county sheriffs" in the proviso to the final paragraph.

TITLE 26—FISH AND GAME

Chapter

1. Fish and game commission, director and wardens—creation—powers and duties, 26-104, 26-104.2, 26-105, 26-110.1, 26-110.2, 26-119, 26-124.
2. Fishing and hunting licenses, 26-201, 26-202.1, 26-202.2, 26-202.6, 26-204, 26-215, 26-223, 26-229 to 26-233.
3. Restrictions on taking fish and game—open and closed seasons, 26-301, 26-302, 26-303.5, 26-307, 26-307.2, 26-307.3, 26-332, 26-345.
5. Protection of certain wild birds—sale of confiscated birds and animals, 26-501, 26-501.1.
8. Miscellaneous prohibitions, 26-812 to 26-814.
9. Outfitters and guides—taxidermists, 26-908 to 26-922.
11. Game preserves, migratory bird reservations, 26-1128.
12. Permits for breeding game birds and animals—other regulations, 26-1201, 26-1205 to 26-1212.
15. Construction and hydraulic projects affecting fish and game, 26-1502, 26-1505, 26-1507, 26-1508.
17. Importation of salmonid fish or eggs, 26-1701 to 26-1705.

CHAPTER 1—FISH AND GAME COMMISSION, DIRECTOR AND WARDENS— CREATION—POWERS AND DUTIES

Section

- 26-104. Powers and duties of commission.
26-104.2. Regulations during special archery seasons.
26-105. Compensation of commissioners.
26-110.1. Protection of private property by fish and game wardens—ex officio fire wardens.
26-110.2. Power of wardens in protection of private property.
26-119. Fish and game commission to procure plans for construction projects.
26-124. Reports of state fish and game director.

26-101. (3650) Creation of state fish and game commission.

Cross-References

Commission continued after reorganization, sec. 82A-2004.

Department abolished and functions transferred, sec. 82A-2002.

Terms of office of commission members after reorganization, sec. 82A-112(2)(b).

26-102. (3651) Districts for appointment of members of commission.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

26-104. (3653) Powers and duties of commission. (1) to (14). * * * [Same as parent volume.]

(15) It shall have authority to fix seasons, bag limits, possession limits and season limits; to open or close, shorten or lengthen seasons on any species of game, bird, fish or fur-bearing animal as defined by section 26-201, and to declare areas open to the hunting of deer, antelope and elk by bow and arrow permit holders, and during times when only bow and arrows may be used, to hunt deer, antelope and elk in such areas; it is authorized to declare areas open to deer hunting where shotguns only may be used to hunt or kill deer; and it is authorized to declare areas which may be open to special license holders only, and issue special licenses in

a limited number when it shall determine, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish or animals, or fur-bearing animals, or to declare such a special season and issue special licenses whenever game birds or animals or fur-bearing animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of such property, and in determining to whom such licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system; provided, however, that all drawings for elk permits shall be held in the city or town which has suitable accommodations for the persons who will attend the drawing nearest to the area to be hunted but in no case shall the drawing be held in a city or town more distant than the county seat nearest to the area to be hunted.

(16) to (25). * * * [Same as parent volume.]

(26) It shall have authority to promulgate and enforce rules and regulations governing recreational uses of all public fishing reservoirs, public lakes, rivers and streams or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner.

Such rules shall be promulgated in the interest of public health, public safety and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, water skiing, surfboarding, picnicking, camping, sanitation and use of firearms on such reservoirs, lakes, rivers and streams or at designated areas along the shore of such reservoirs, lakes, rivers and streams. These rules shall be subject to review and approval by the state board of health as to public health and sanitation before becoming effective. Copies of such rules shall show such endorsement.

History: En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; amd. Sec. 1, Ch. 157, L. 1941; Subsec. (24) added by Sec. 1, Ch. 40, L. 1951; Subsec. (15) amd. by Sec. 1, Ch. 157, L. 1955; Subsec. (25) added by Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, Ch. 36, L. 1959; Subsec. (26) added by Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965; Subsec. (15) amd. by Sec. 1, Ch. 344, L. 1969; amd. Sec. 1, Ch. 279, L. 1971.

Amendments

The 1969 amendment added the proviso at the end of subsection (15).

The 1971 amendment inserted "all" before "public fishing reservoirs," "public" before "lakes," and "rivers and streams" in the first paragraph of subsection (26); and inserted "the operation of motor-driven boats" and "lakes, rivers and streams" in two places in the first sentence of the second paragraph of subsection (26).

Subd. 9

Fish Ladder Construction

Mandamus to compel fish pond licensee, in compliance with a statute, to construct fish ladder on diversion dam installed seven years before with approval of fish and game commission would be denied on theory that individuals who have put water to beneficial use should not have their rights arbitrarily diluted under claim of sovereign right. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

Subd. 15

Seasons on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain

under the absolute jurisdiction and control of Congress of United States. State ex rel. *Nepstad v. Danielson*, 149 M 438, 427 P 2d 689.

26-104.2. Regulations during special archery seasons. The fish and game commission shall have the authority to promulgate regulations governing the use of livestock and vehicles, by archers, during special archery seasons.

History: En. Sec. 1, Ch. 106, L. 1971.

commission to regulate the use, by archers, of livestock and vehicles during special archery seasons.

Title of Act

An act authorizing the fish and game

26-105. (3654) Compensation of commissioners. The members of the commission shall receive no compensation for their services as members thereof, except a per diem of twenty dollars (\$20) for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission other than the chairman receive as said per diem a sum in excess of one thousand five hundred dollars (\$1,500) in any one (1) year, provided that the chairman of the commission shall not receive a sum in excess of two thousand dollars (\$2,000) in any one (1) year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission which shall be paid from the fish and game fund of the state of Montana upon presentation of proper vouchers therefor.

History: En. Sec. 5, Ch. 193, L. 1921; re-en. Sec. 3654, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1949; amd. Sec. 1, Ch. 6, L. 1951; amd. Sec. 1, Ch. 127, L. 1953; amd. Sec. 1, Ch. 57, L. 1957; amd. Sec. 1, Ch. 238, L. 1965; amd. Sec. 1, Ch. 166, L. 1969.

Amendments

The 1969 amendment increased the per diem allowance from \$15 to \$20, raised the maximum per diem compensation of members other than the chairman from \$1,000 to \$1,500 per year and raised the maximum per diem compensation of the chairman from \$1,500 to \$2,000.

26-106. (3655) State fish and game director—qualifications, etc.

Cross-References

Director's position continued in department of fish and game, sec. 82A-2003.

26-110. (3659) Qualifications, powers and duties, of game wardens.

Subd. 4

Confiscation of Illegally Killed Game

Illegally killed elk, tagged improperly in that one tag was not punched on month and day of kill and other was not filled in with name and address of hunter and county of kill, were subject to confiscation by fish and game commission. State ex rel. *Visser v. State Fish and Game Commission*, 150 M 525, 437 P 2d 373.

Subd. 6

Consent to Improper Tagging

Any consent given by game warden to illegal tagging of killed elk would be outside scope of authority and would have no effect whatever in law. State ex rel. *Visser v. State Fish and Game Commission*, 150 M 525, 437 P 2d 373.

26-110.1. Protection of private property by fish and game wardens—ex officio fire wardens. It shall be the duty of state fish and game wardens

(state conservation officers) to enforce the provisions of sections 94-3308, 94-3309 and 32-4410, R. C. M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R. C. M. 1947.

History: En. Sec. 1, Ch. 85, L. 1969.

Title of Act

An act to require state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308,

94-3309 and 32-4410, R. C. M. 1947, on private lands where public recreation is permitted, and act as ex officio fire wardens as provided by section 81-1412, R. C. M. 1947.

26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of sections 94-3308, 94-3309 and 32-4410, R. C. M. 1947.

History: En. Sec. 2, Ch. 85, L. 1969.

26-111. (3660) Oath of state fish and game director and wardens.

Cross-References

Bonds of state officers and employees,
sec. 6-105 et seq.

26-115. (3664) Superintendent of state fisheries—appointment.

Cross-References

Bonds of state officers and employees,
sec. 6-105 et seq.

26-119. (3668) Fish and game commission to procure plans for construction projects. It shall be the duty of the state fish and game commission of the state of Montana to procure suitable plans and specifications for any construction project under its authority or under authority of the state legislature, when the estimated value or cost of the same shall be more than one thousand dollars (\$1,000) but less than five thousand dollars (\$5,000) and said commission shall cause said project to be constructed, but in accordance with such plans and specifications, by contract, said contract to be let after publishing a notice stating the time and place of letting the same, and where plans and specifications may be seen. Said notice shall be published not less than once a week for two (2) weeks prior to the time of letting such contract, in some newspaper of general circulation in the county in which said project is to be constructed, and elsewhere if deemed best by said commission, and said commission, if not satisfied with the bids received, or for any other reason, may reject any and all bids received and readvertise as often as may be necessary. Only one bid need be received and the contract shall be let to the lowest responsible bidder. Any person to whom a contract may be given shall be required to give a good and sufficient bond, conditioned for the faithful performance and completion of such contract, the same to be approved by the commission, or some member of the commission. The commission may contract for construction projects estimated to cost one thousand dollars (\$1,000) or less without providing for plans or specifications, notice, competitive bidding or performance bonds.

History: En. Sec. 19, Ch. 193, L. 1921; re-en. Sec. 3668, R. C. M. 1921; amd. Sec. 1, Ch. 186, L. 1969.

Amendments

The 1969 amendment substituted "construction projects" for "buildings" where the references appear, inserted "but less than five thousand dollars (\$5,000)" in the

first sentence, inserted the provision that only one bid need be received, and added the last sentence.

Effective Date

Section 2 of Ch. 186, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 3, 1969.

26-124. (3673) Reports of state fish and game director. The state fish and game director shall, on or before the first day of June of each year, make a written report to the state fish and game commission of the operation of his department during the preceding year ending April 30th and the state fish and game commission shall thereafter report as provided in section 2 [82-4002] of this act.

History: En. Sec. 24, Ch. 193, L. 1921; re-en. Sec. 3673, R. C. M. 1921; amd. Sec. 6, Ch. 81, L. 1951; amd. Sec. 9, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted "di-

rector" for "warden" and substituted the reference to the reporting requirements of section 82-4002 for provisions detailing contents of report to be made to governor in every even-numbered year.

26-135. Wild animals damaging property, etc.

Discretion of Commission

Fish and game commission cannot be mandated to permit landowner to kill elk to protect his property since, although statute compels commission to investigate

property damage upon complaint, it confers discretion to act, one exercise of which is taking no action. State ex rel. Sackman v. State Fish and Game Commission, 151 M 45, 438 P 2d 663.

CHAPTER 2—FISHING AND HUNTING LICENSES

Section

- 26-201. Definitions.
- 26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses.
- 26-202.2. Special licenses—tagging of carcasses of game animals.
- 26-202.6. Nonresident one (1) day fishing license (Class B-4).
- 26-204. Application for license.
- 26-215. Exemption from general provisions.
- 26-223. Appointments nontransferable—revocation—oaths.
- 26-229. Wildlife conservation license required for purchase of hunting, fishing or trapping license.
- 26-230. Application—hunting, fishing or trapping license tags to be affixed or recorded on wildlife conservation license—fees—expiration.
- 26-231. Unlawful sales of hunting, fishing or trapping licenses.
- 26-232. Misdemeanor—penalty.
- 26-233. Disposition of fees.

26-201. (3681) Definitions. For the purpose of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and single line or single rod in hand or within immediate control.

Upland game birds. Sharp-tail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear and bison or buffalo.

Fur-bearing animals. Martin or sable, otter, muskrat, fisher, mink, beaver and black-footed ferret.

Predatory animals. Coyote, wolf, wolverine, weasel, skunk and civet cat, and bobcat.

Game fish. All species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel and muskellunge); all species of the genus micropeterus (bass); all species of the genus polyodon (paddlefish) and all species of the genus acipenser (sturgeon).

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R.C.M. 1921; amd. Sec. 3, Ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953; amd. Sec. 1, Ch. 34, L. 1959; amd. Sec. 1, Ch. 11, L. 1965; amd. Sec. 1, Ch. 28, L. 1965; amd. Sec. 1, Ch. 46, L. 1971; Sec. 1, Ch. 189, L. 1971.

Since the changes made by the two acts do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

Chapter 46, Laws of 1971, added "and all species of the genus acipenser (sturgeon)" to the definition of game fish; and made a minor change in phraseology.

Chapter 189, Laws of 1971, transferred mountain lion from the predatory animals paragraph to the game animals paragraph and made minor changes in punctuation and style.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 46 and once by Ch. 189. Neither amendatory act mentioned nor included the changes made by the other.

26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses. (1) and (2). * * * [Same as parent volume.]

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars (\$3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer,

antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars (\$3); Class A-4, Deer B Tag, five dollars (\$5); Class A-5 Elk Tag, three dollars (\$3); Class A-6, Black or Brown Bear Tag, five dollars (\$5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) to (10) * * * [Same as parent volume.]

(11) Special licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars (\$25), nonresident fifty dollars (\$50);

Mountain Goat, resident fifteen dollars (\$15), nonresident thirty dollars (\$30);

Mountain Sheep, resident twenty-five dollars (\$25), nonresident fifty dollars (\$50);

Bison or Buffalo, resident twenty-five dollars (\$25), nonresident one hundred dollars (\$100);

Antelope, resident three dollars (\$3), nonresident ten dollars (\$10);

Grizzly Bear, resident five dollars (\$5), nonresident grizzly, black or brown bear, thirty-five dollars (\$35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars (\$25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) and (13) * * * [Same as parent volume.]

(14) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-five (65) years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents (\$.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents (\$.15).

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half ($\frac{1}{2}$) of the fees prescribed in this section.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(15) * * * [Same as parent volume.]

(16) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of twenty dollars (\$20) shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportsman's license an appropriate decal.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971.

Amendments

The 1969 amendment inserted "a Class A-1 license and any one of" before "the following" in subsection (3) and revised subsection (14) by substituting "and hunt game birds * * * game commission" for "without a Class A license and hunt game birds without a Class A-1 license. He shall carry proof of age in lieu of the license" in subdivision (a), by substituting the provisions of subdivision (b) for "A child residing at the Montana children's center at Twin Bridges and the committed resident of the Montana training center at Boulder will be entitled to fish without

a license. He shall carry a written statement by the superintendent of the center in lieu of the license," by inserting the provisions of subdivision (c), and by designating former subdivisions (c) to (f) as (d) to (g).

The 1971 amendment inserted in subsection (4) the provisions for class A-6 licenses; deleted from the end of subsection (4) a sentence reading "Any holder of a class A-3, A-4, or A-5 license shall further be entitled to pursue, hunt, shoot and kill black or brown bear and possess the dead bodies of black or brown bear which are so authorized by regulations of the commission;" increased the resident grizzly bear fee specified in subsection (11) from one dollar to five dollars; increased the nonresident grizzly bear fee from \$25.00 to \$35.00; inserted in subsection (11) the provision relating to black or brown bear fees; deleted from the end of subsection (11) a sentence reading "Any holder of a special license as herein provided shall be further en-

titled to pursue, hunt, shoot and kill black or brown bear and possess the dead bodies of black or brown bear which are so authorized by regulations of the commission;" and inserted the reference to class A-6 licenses in the first sentence of subsection (16).

Subd. 4

Tagging Game Killed by Another

Tagging of game animal that someone

else has killed or so far brought under control that one can walk up to it and cut its throat is not method of acquiring ownership contemplated by statute authorizing licensed hunter to pursue, hunt, shoot and kill game animal and then to possess carcass with result that person tagging illegally killed elk is not entitled to possession. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-202.2. Special licenses—tagging of carcasses of game animals. (1) Special licenses authorized to be issued under the general powers of the fish and game commission may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) Any person who has obtained a grizzly bear, moose, mountain sheep, bison, or buffalo license shall not be eligible to apply for another such license for the next succeeding seven (7) years, if such person has killed or taken an animal of the species for which such special license was issued. Any person who has obtained a grizzly bear, moose, mountain sheep, bison or buffalo license but did not kill or take an animal of the species for which such special license was issued, shall be eligible to apply for another such license in any succeeding year if he returns his unused special license to the fish and game commission before or at the time application is made. It is further provided that any person who has received a special license for elk or mountain goat shall not be eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the commission reapplication may be made by those valid license holders of the current year who may fall within these limitations. It is further provided that any person who has killed or taken a game animal, except a deer during the current license year, shall not be permitted to receive a special license under this act to hunt or kill a second game animal of the same species.

(3) Tagging of carcasses of game animals. Every license issued by the fish and game commission authorizing the holder thereof to pursue, shoot, kill, capture, take or possess game animals, whether issued to a resident or a nonresident, shall provide such tags, coupons, or markers, as the commission shall prescribe, and when any person should take or kill any game animal under such license, such person shall immediately thereafter cut out, from the tag, coupon or other marker, the date the animal was killed or taken and attach the tag, coupon or other marker to said animal, completely filled out with the name of the license holder, his address, and any other information requested on such tag, coupon or other marker, and such tag, coupon or other marker shall be kept attached to said carcass so long as any considerable portion of the carcass remains unconsumed, and when the proper tag, coupon or other marker is attached to said game animal so killed, the same may be possessed, used, stored and transported. Any person who should kill any game animal by authority

of any license issued for the killing of such game animal, and shall fail or neglect to cut out day and month of kill or provide such other information as is required and attach his tag, coupon or other marker so provided with the license issued, to the carcass of said game animal or portion thereof, or any person who shall fail to keep said tag, coupon or other marker attached to said game animal or portion thereof while the same is possessed by him shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for by law in section 26-324.

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963; amd. Sec. 1, Ch. 72, L. 1969; amd. Sec. 1, Ch. 48, L. 1971.

Effective Date

Section 2 of Ch. 72, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

Amendments

The 1969 amendment deleted "or antelope" after "deer" in the last sentence of subsection (2) and rewrote the provisions of subsection (3) to substitute references to "game animal" for "deer, elk, moose or antelope" and to require the date and month of kill to be cut out of the game tag.

The 1971 amendment inserted "grizzly bear" in the first and second sentences of subsection (2).

Subd. 3

Tagging Game Killed by Another

Under statute requiring tagging, word "take" does not mean that one can tag animal someone else has killed, so that if one person illegally killed elk another person cannot gain ownership by tagging it and ownership of elk remains in state. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-202.6. Nonresident one (1) day fishing license (Class B-4). Any person not a resident as defined in section 26-202.3, R. C. M. 1947, who is a holder of a valid wildlife conservation license, upon payment of the sum of one dollar (\$1) to any agent of the state fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a one (1) day nonresident fishing license, which shall authorize the holder to fish with hook and line as prescribed by rules and regulations of the commission for one (1) calendar day as indicated on the license.

History: En. Sec. 1, Ch. 117, L. 1969.

Effective Date

Section 2 of Ch. 117, Laws 1969 read "This act shall be in full force and effect from and after May 1, 1969."

Title of Act

An act to provide for a one (1) day nonresident fishing license to be issued by the state fish and game commission.

26-204. (3684) Application for license. Such license shall be procured from the state fish and game director, or any state fish and game warden, or any authorized agent of the state fish and game director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data or descriptions as may be required by the commission. The statements made by the applicant shall be subscribed to before the officer or agent issuing said license.

It is unlawful to subscribe to any application containing a material false statement. Any material false statement contained in an application renders it, and any license issued pursuant to it, null and void. Any person violating any provision of this statute is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 238, L. 1921; 1, Ch. 84, L. 1947; amd. Sec. 1, Ch. 157, re-en. Sec. 3684, R. C. M. 1921; amd. Sec. L. 1969.

Amendments

The 1969 amendment substituted "director" for "warden" and deleted "deputy" before "state fish and game warden" in the first sentence and deleted "and sworn" after "subscribed" in the last sentence of the first paragraph and rewrote the second paragraph which read: "Any person who shall swear or affirm to any false statement in the application for a hunting or

fishing license, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section 26-324."

Effective Date

Section 2 of Ch. 157, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

26-215. (3691) Exemption from general provisions. (a) The provisions of the fish and game laws shall not apply to persons pursuing, hunting, capturing, shooting, killing, taking or trapping, or attempting to kill, take or trap predatory mammals, prairie dogs, ground squirrels, jackrabbits, gophers, or house sparrows, crows, blackbirds, magpies, starlings and rock doves, which may be pursued, hunted, taken, killed, shot, trapped, possessed or transported at any time except as specifically set forth herein and enforced pursuant to section 26-324.

(b) It shall be illegal to hunt jackrabbits on private land with artificial light unless written permission of the landowners, lessee or agent is obtained.

(c) * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R.C.M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965; amd. Sec. 1, Ch. 26, L. 1967; amd. Sec. 1, Ch. 309, L. 1971.

Amendments

The 1971 amendment substituted "pre-

datory mammals" for "predatory animals" in subsection (a); substituted "house sparrows" for "English sparrows" in subsection (a); deleted "hawks, fish ducks, blue heron, snow owls, great grey owls, great horned owls," "kingfishers," and "jays and eagles" from subsection (a); inserted "starlings and rock doves" in subsection (a); and made a minor change in phraseology.

26-223. Appointments nontransferable — revocation — oaths. Appointments of license agents shall be nontransferable, and each appointment shall be valid only at the single location of the business as stated on the certificate of appointment. Such appointments may be summarily revoked at any time by the state fish and game director upon discontinuance of the business at the stated location or for noncompliance with the provisions of this act or other regulations. Duly appointed license agents are hereby authorized to administer oaths to applicants for hunting and fishing licenses.

History: En. Sec. 4, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 7, L. 1969.

Amendments

The 1969 amendment rewrote this section to restrict the operation of license agents to a single business location as stated in the certificate of appointment.

Effective Date

Section 2 of Ch. 7, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

26-229. Wildlife conservation license required for purchase of hunting, fishing or trapping license. It shall be unlawful for any person or persons to purchase any hunting, fishing or trapping license without first having obtained a wildlife conservation license as hereinafter provided.

History: En. Sec. 1, Ch. 172, L. 1969.

Title of Act

An act requiring persons purchasing hunting, fishing and trapping licenses to possess a wildlife conservation license, and

providing that fees for such purchases be deposited with the state treasurer in the earmarked revenue fund to the credit of the state fish and game commission in accordance with the provisions of section 26-121, R. C. M. 1947.

26-230. Application—hunting, fishing or trapping license tags to be affixed or recorded on wildlife conservation license—fees—expiration. A wildlife conservation license shall be sold upon written application in such form and containing his name, age, occupation, place of residence, post-office address, length of time in the state of Montana, whether a citizen of the United States or an alien and present a driver's license or other identification to substantiate such information and shall be subscribed by the applicant. Hunting, fishing or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such regulations as the commission may prescribe. Residents, as defined by section 26-202.3, may purchase a resident's license for a fee of twenty-five cents (\$.25) and all others a nonresident's license for a fee of one dollar (\$1). Licenses issued shall be void after the thirtieth (30th) day of April next succeeding their issuance.

History: En. Sec. 2, Ch. 172, L. 1969.

26-231. Unlawful sales of hunting, fishing or trapping licenses. It shall be unlawful for any license agent to sell any hunting, fishing or trapping license to any person who does not present his wildlife conservation license at the time of application for such licenses.

History: En. Sec. 3, Ch. 172, L. 1969.

26-232. Misdemeanor—penalty. Any person who shall subscribe to any false statement in application for a wildlife conservation license or violate any other provision of this act shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished as provided in section 26-324.

History: En. Sec. 4, Ch. 172, L. 1969.

26-233. Disposition of fees. The fees from the wildlife conservation license shall be delivered to the state treasurer and deposited by him in the earmarked revenue fund to the credit of the state fish and game commission in accordance with the provisions of section 26-121.

History: En. Sec. 5, Ch. 172, L. 1969.

Effective Date

Section 6 of Ch. 172, Laws 1969 read
"This act is effective May 1, 1969."

**CHAPTER 3—RESTRICTIONS ON TAKING FISH AND GAME—
OPEN AND CLOSED SEASONS**

Section

- 26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.
- 26-302. Big game hunters to wear colored garments.
- 26-303.5. Use of dogs for hunting mountain lion.
- 26-307. Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions for bear.

26-307.2. Policy as to grizzly bear.

26-307.3. Regulatory powers of commission as to grizzly bear.

26-332. Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish.

26-345. Fire danger—area closed to hunting and fishing.

26-301. (3694) Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto. (1) * * * [Same as parent volume.]

(2) (a) and (b). * * * [Same as parent volume.]

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) * * * [Same as parent volume.]

5. No person shall chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, and stock-killing mountain lions, or other means of taking stock-killing bears and stock-killing mountain lions except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

(6) * * * [Same as parent volume.]

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and four (4) feet in width, in such waters as may be designated by the commission.

(8) It shall be unlawful for anyone to use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up or harass game animals, game birds or fur-bearing animals.

(9) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to

it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R. C. M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971.

Compiler's Notes

This section was amended twice in 1969, once by Ch. 90 and once by Ch. 201. Neither amendatory act mentioned the other nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments.

26-302. Big game hunters to wear colored garments. (1) It shall be unlawful for any person to hunt any of the big game animals in this state or to accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without such person wearing as exterior garments on his person a total of not less than four hundred (400) square inches of hunter orange material.

(2) "Hunter orange" means a daylight fluorescent orange color.

This section shall not apply to any person hunting with a bow and arrow in an area which at the time is open to big game hunting with a bow and arrow only.

(3) Failure of any person to comply with this section shall not be treated as evidence of contributory negligence in a civil action for injury to him or for his wrongful death.

History: En. Sec. 1, Ch. 74, L. 1937; amd. Sec. 1, Ch. 12, L. 1961; amd. Sec. 1, Ch. 305, L. 1971.

Amendments

The 1971 amendment designated the former section as subsection (1); inserted "or to accompany any hunter as an outfitter or guide" in subsection (1); substituted "on his person a total of not less than four hundred (400) square inches

Amendments

The 1969 amendment by chapter 90 inserted provision in subsection (7) permitting the commission to declare open seasons for taking walleyed pike, sauger and northern pike with spear or gig.

The 1969 amendment by ch. 201 inserted subsection (8) and renumbered former subsection (8) as subsection (9), and made a minor change in punctuation in subsection (3).

The 1971 amendment inserted "and stock-killing mountain lions" in two places in subsection 5.

Effective Date

Section 2 of Ch. 201, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

of hunter orange material" for "a cap or hat, shirt jacket, coat or sweater of a bright red, orange or yellow color" in subsection (1); added subsections (2) and (3); and made minor changes in style and phraseology.

Effective Date

Section 1(4) of Ch. 305, Laws 1971 read "This act shall become effective May 1, 1972."

26-303.2. Repealed.

Repeal

Section 26-303.2 (Sec. 2, Ch. 229, L. 1965), prohibiting nonresident hunting of big game animals unless accompanied by

a licensed resident, is repealed by Sec. 16, Ch. 221, Laws 1971, effective May 1, 1972. For present law, see sec. 26-909.

26-303.5. Use of dogs for hunting mountain lion. The Montana fish and game commission shall have authority to allow and regulate the use of dogs for hunting mountain lion.

History: En. Sec. 1, Ch. 184, L. 1971.

Title of Act

An act to allow and regulate the use of dogs for hunting mountain lion.

26-306. (3695) Private artificial lake or pond, etc.

Artificial Ponds

Fish and game commission abused discretion in failing to renew previously issued licenses for one pond created by diverting water from creek to channel dry for forty years and for another pond created by spring-fed creek arising and

flowing into Yellowstone River entirely on licensee's property since ponds were entirely artificial and man-made within meaning of statute. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

26-307. (3696) Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions for bear. (1) It shall be unlawful and a misdemeanor for any person responsible for the death of any game animal of this state, excepting grizzly, black and brown bear, to detach or remove from the carcass only the head, hide, antlers, tusks or teeth, or any or all of aforesaid parts, or to waste any part of any game animal, game bird, or game fish suitable for food, or to abandon the carcass of any game animal in the field, except black and brown bear, which need have removed and taken from the carcass only the head or the hide of such bear, and except grizzly bear, which need have removed and taken from the carcass only the head and hide and such other parts as the state fish and game commission may demand for scientific purposes. All parts of grizzly bear demanded by the commission for scientific purposes must be delivered to an officer or employee of the commission for inspection as soon as possible after removal and the commission shall return to the licensee any bone structure and skull within one year upon written request. The hide shall be returned immediately.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R. C. M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969.

Amendments

The 1969 amendment added the provisions in subsection (1) relating to delivery of grizzly bear parts to the commission.

Effective Date

Section 4 of Ch. 134, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

Seasons on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing a penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. *State ex rel. Nepstad v. Danielson*, 149 M 438, 427 P 2d 689.

26-307.2. Policy as to grizzly bear. It is hereby declared the policy of the state of Montana to protect, conserve and manage grizzly bear as a rare species of Montana wildlife.

History: En. Sec. 1, Ch. 134, L. 1969.

Title of Act

An act to protect, conserve and manage grizzly bear as a rare species of Montana wildlife, to provide the state fish and game commission with authority to promulgate such regulations as may

be necessary for the protection, conservation and management of grizzly bear, and to amend section 26-307, R. C. M. 1947, by providing that such parts of grizzly bear as the commission shall demand must be removed and delivered to an officer or employee of the commission.

26-307.3. Regulatory powers of commission as to grizzly bear. The state fish and game commission shall have authority to provide open and closed seasons; means of taking; shooting hours; tagging requirements for carcasses, skulls and hides; possession limits; and requirements for transportation, exportation and importation of grizzly bear.

History: En. Sec. 2, Ch. 134, L. 1969.

26-332. (3714) Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish. Every person who takes or catches fish in any of the waters of this state except with hook and line held in hand or line and hook attached to rod or pole held in hand, or who takes or catches fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries, or who takes or catches fish by means of the use of fishtraps, grab hooks, seines, nets, or other similar means for catching fish, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 26-324, and the amendments thereto; provided, however, that the Montana fish and game commission shall have the power, authority, and jurisdiction, to designate such waters within the state of Montana, wherein, in the judgment of the members of said commission, spears or gigs may be used for taking walleyed pike, sauger, northern pike and nongame fish, and traps, seines, or nets, and rubber or spring propelled spears when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish and to close such waters so designated at the discretion of the commission, and to permit the taking of black bass in Flathead Lake, the taking of all fish by said means in said waters when so designated to be done under such rules and regulations as said commission may prescribe with reference thereto, and under the supervision of said commission, and all such nongame fish so taken may be possessed and sold in such manner and under such restrictions as said commission may direct, all fish other than those herein designated so taken under said rules and regulations when prescribed by said commission, shall be returned uninjured to the waters from which they were taken.

History: En. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R. C. M. 1921; amd. Sec. 16, Sec. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927; amd. Sec. 1, Ch. 44, L. 1959; amd. Sec. 2, Ch. 90, L. 1969; amd. Sec. 1, Ch. 8, L. 1971.

Amendments

The 1969 amendment inserted "spears or

gigs * * * nongame fish, and" in the proviso and inserted "nongame" before "fish so taken" near the end of the section.

The 1971 amendment deleted "nongame" after "may be used for the taking of designated species of" in the middle part of the proviso.

26-345. Fire danger—Area closed to hunting and fishing. When the fire danger becomes so extreme that the governor of the state of Montana upon the advice and recommendation of the Montana state forester closes an area to trespass because of fire danger, that area shall automatically become closed to any hunting or fishing and shall remain closed so long as the fire closure remains in effect.

History: En. Sec. 1, Ch. 57, L. 1969. hunting or fishing season during periods of extreme fire danger.

Title of Act

An act allowing for the closure of the

CHAPTER 4—BEAVER—TRAPPING—LICENSE—PROTECTION

26-401. (3722) Repealed.

Repeal

Section 26-401 (Sec. 38, Ch. 173, L. 1917; Sec. 1, Ch. 197, L. 1919; Sec. 17, Ch. 77, L. 1923; Sec. 19, Ch. 59, L. 1927; Sec. 1, Ch. 167, L. 1935; Sec. 15, Ch.

224, L. 1947; Sec. 1, Ch. 153, L. 1953; Sec. 1, Ch. 24, L. 1957; Sec. 1, Ch. 35, L. 1967), relating to protection of beaver, was repealed by Sec. 1, Ch. 56, Laws 1969, effective September 1, 1969.

CHAPTER 5—PROTECTION OF CERTAIN WILD BIRDS—SALE OF CONFISCATED BIRDS AND ANIMALS

Section

26-501. Protection of wild birds other than game birds.

26-501.1. Protection and conservation of raptors—falconry.

26-501. (3723) Protection of wild birds other than game birds. Any person who at any time shall hunt, capture, kill, possess, purchase, offer or expose for sale, ship, transport or cause to be shipped or transported any wild bird other than a game bird, or any part of the plumage, skin or body of any such bird, irrespective of whether said bird was captured or killed within or without the state, or take or destroy the nest or eggs of any such wild bird, except under a certificate, falconer's license or permit issued by the state fish and game warden [director], shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by section 26-324. The provisions of this section shall not apply to the hunting, trapping, or killing of house sparrows, crows, starlings, rock doves, blackbirds, and magpies, and such other birds as the fish and game commission shall designate, or the taking or destruction of their nests and eggs.

History: En. Sec. 41, Ch. 173, L. 1917; re-en. Sec. 3723, R.C.M. 1921; amd. Sec. 18, Ch. 77, L. 1923; amd. Sec. 20, Ch. 59, L. 1927; amd. Sec. 16, Ch. 224, L. 1947; amd. Sec. 2, Ch. 309, L. 1971.

Amendments

The 1971 amendment inserted "falconer's

license" in the first sentence; substituted "house sparrows" for "English sparrows" in the second sentence; inserted "starlings, rock doves" in the second sentence; and deleted "eagles, hawks, snow owls, great gray owls, great horned owls, kingfishers, and jays" from the second sentence.

26-501.1. Protection and conservation of raptors—falconry. (1) The word "raptors" when used in this section shall mean all birds of the orders falconiformes and strigiformes, commonly called falcons, hawks, eagles, ospreys and owls.

(2) It is prohibited for any person at any time to hunt, capture, kill, possess, purchase, offer or expose for sale, transport or cause to be shipped or transported any raptor except as herein provided.

(3) The Montana fish and game commission may make specific regulations for the keeping of records, trapping or taking, possession or training of raptors used in the practice of falconry, and may authorize the issuance of licenses to persons for the practice of falconry. It shall be unlawful for a resident of Montana to possess a raptor or to train any raptor in the practice of falconry except under such license.

(4) The peregrine falcon (*Falcon peregrinus*), bald eagle (*Haliaeetus leucocephalus*), golden eagle (*Aquila chrysaetos*), and osprey (*Pandion haliaetus*) may not be captured in the state of Montana for the sport of falconry.

(5) The fee for a falconry license is three dollars (\$3) a year or any part thereof. License shall expire April 30th each year.

(6) No license shall be issued to any person under the age of twelve (12) years.

(7) Species of raptors which are native to North America may be brought into Montana for the purpose of falconry unless such action is specifically prohibited by this section, the laws of other states, or the regulations of the federal government. Such raptors may be possessed, subject to all provisions of this section. Any person bringing a raptor into the state of Montana must be able to show proof of the area of origin.

(8) No licensee shall at any time possess more than three (3) raptors, and this shall include those that may be imported.

(9) Licensees may take raptors as young or fledglings from nests (unless specifically prohibited by commission regulations), or by traps or nets which are humane in their operation and use. Not more than one (1) young may be taken from one (1) nest by a permittee or permittees, and at least one (1) young must be left in the nest. The commission may close an area of the state to the taking of raptors at any time or designate other raptors which may not be taken. This regulation does not permit the removal of raptors in any national or state refuge or park or in any area in which local laws may prohibit such activity. Trapping raptors is permitted only between September 1 and February 1.

(10) Raptors shall not be used to intentionally flush or harass big game.

(11) Raptors may not be loosed intentionally at protected mammals and birds. Game bird limits and all seasons and other regulations relating to such game birds must be obeyed.

(12) No licensee shall transfer ownership or possession of any raptor taken or possessed under the provisions of these regulations without notifying the Montana state fish and game department within ten (10) days after the date of transfer.

(13) Licensees shall have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds or unprotected birds or mammals shall have in possession a valid hunting license.

(14) Falconry license or permits are not transferable and may be

revoked for due cause at any time by the Montana state fish and game department.

(15) No person shall sell or offer for sale any Montana raptors in the state of Montana. No persons shall transport any raptors out of the state except by permit issued by the Montana fish and game department.

(16) Any person who violates any of the provisions of this act is guilty of a misdemeanor, and upon conviction thereof, shall be subject to prosecution pursuant to section 26-324.

(17) Predatory hawks and owls destroying livestock or poultry may be killed at any time by such livestock or poultry owners. Eagles may be killed in compliance with federal law and regulation.

History: En. Sec. 3, Ch. 309, L. 1971.

CHAPTER 8—MISCELLANEOUS PROHIBITIONS

Section

26-812. Forfeiture of license or permit for littering.

26-813. Placing of caged fish in public waters prohibited except as provided by regulation.

26-814. Authority of commission over placing of caged fish.

26-812. Forfeiture of license or permit for littering. Any holder of a Montana resident or nonresident fishing or hunting license, or camping permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing or camping shall forfeit his license and privilege to hunt, fish, camp or trap within Montana for a period of ninety (90) days from the date of conviction.

History: En. Sec. 1, Ch. 43, L. 1971.

Title of Act

An act to provide that the hunting or

fishing license or camping permit of any person convicted of littering public or private lands while hunting, fishing or camping shall be forfeited for ninety days.

26-813. Placing of caged fish in public waters prohibited except as provided by regulation. It shall be unlawful for any person, firm or corporation to place or cause to be placed caged live fish in any of the public waters of the state of Montana, except as provided by fish and game commission regulation.

History: En. Sec. 1, Ch. 126, L. 1971.

Title of Act

An act to regulate the placing of caged

fish in public waters and provide the fish and game commission with authority to regulate.

26-814. Authority of commission over placing of caged fish. The commission shall have the authority to regulate the placing of caged fish in public waters to protect the recreational and aesthetic use of such water from pollution, excessive private use and the introduction of disease.

History: En. Sec. 2, Ch. 126, L. 1971.

CHAPTER 9—OUTFITTERS AND GUIDES—TAXIDERMISTS

Section

26-908. Outfitters and guides law—definitions.

26-909. Licensed outfitter or guide required for nonresident hunting—exception for landowner—waiver.

26-910. Appointment of supervisor of outfitting.

- 26-911. Powers and duties of supervisor of outfitting.
- 26-912. Establishment of outfitter's council—election of members—terms of office—powers and duties.
- 26-913. Rules and regulations for outfitting and guiding.
- 26-914. Requirement of license as outfitter or guide—services performed—standards.
- 26-915. Application for license—contents—requirements and qualifications—fees.
- 26-916. Kinds of license issued.
- 26-917. Deposit of fees.
- 26-918. Grounds for suspension or revocation of license.
- 26-919. Procedure for revocation or suspension of license.
- 26-920. Appeal to district court.
- 26-921. Persons authorized to enforce act.
- 26-922. Criminal penalty for violations.

26-901, 26-902. (3745, 3746) Repealed.

Repeal

Sections 26-901 and 26-902 (Secs. 66, 67, Ch. 173, L. 1917; Sec. 17½, Ch. 77, L. 1923; Sec. 1, Ch. 103, L. 1941; Sec. 25, Ch. 224, L. 1947; Secs. 1, 2, Ch. 173,

L. 1949; Secs. 1, 2, Ch. 184, L. 1951; Secs. 1, 5, Ch. 223, L. 1955), relating to outfitters, are repealed by Sec. 16, Ch. 221, Laws 1971, effective May 1, 1972.

26-908. Outfitters and guides law—definitions. As used in this act, unless the context clearly indicates otherwise: (1) "Outfitter" means that designation or term as defined in section 26-904, R.C.M., 1947.

(2) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person or persons, to hunt or take protected game animals or fish and who does not furnish any facilities, transportation or equipment.

(3) "Resident guide" means any resident who guides resident or nonresident friends for the purpose of hunting game animals without compensation.

(4) "Advisory council" means the Montana outfitter's council.

(5) "Resident" means any person who qualifies for a resident Montana hunting or fishing license under the terms and provisions of section 26-202.3, R.C.M., 1947.

(6) "Nonresident" means any person other than a resident as herein defined.

(7) "License year" means that period commencing May 1 of each year and ending April 30 of the next year.

(8) "Supervisor of outfitting" means the person employed and designated by the Montana fish and game commission and director to primarily administer outfitting and guiding laws and regulations under the laws of Montana.

History: En. Sec. 1, Ch. 221, L. 1971.

Title of Act

An act providing for the licensing and regulation of outfitting and guiding of hunting and fishing parties in the state

of Montana; providing for the regulation of nonresident hunters; the protection of private property; the protection of environmental resources; and to repeal section 26-901, 26-902 and 26-303.2, R.C.M., 1947, and providing an effective date.

26-909. Licensed outfitter or guide required for nonresident hunting—exception for landowner—waiver. (1) It shall be unlawful for any nonresident to hunt game animals on any land within any national forest, wilderness area, national game refuge, or state game range within the state of Montana unless accompanied by a licensed outfitter, professional

guide or resident guide and the nonresident hunting license must bear the signature and license number of the outfitter or resident guide who accompanies him except as noted below.

(2) A landowner or agent may guide nonresident or resident hunters on land owned by, or land leased to him without a guide license; or he may authorize nonresident or resident hunters to hunt without a guide on land owned by, or land leased to, such landowner, lessee or agent. The nonresident hunter's hunting license must bear the signature of the resident landowner, lessee or agent on whose fenced property he is hunting as evidence that permission has been obtained.

(3) The Montana fish and game commission shall have authority to waive guide requirements for holders of B-2, B-5 and B-6 licenses in special deer and antelope areas during the period B-5 and B-6 license holders may hunt.

Guide requirements may not be waived in areas open to a general hunting season on any game animal other than deer and antelope.

History: En. Sec. 2, Ch. 221, L. 1971.

26-910. Appointment of supervisor of outfitting. (1) The state fish and game director, by and with the consent and approval of the state fish and game commission, shall designate and appoint a state fish and game warden or ex officio warden with no conflict of interest to act as supervisor of outfitting who shall have the powers and duties, in addition to those prescribed for state fish and game wardens, in this act provided.

History: En. Sec. 3, Ch. 221, L. 1971.

26-911. Powers and duties of supervisor of outfitting. The supervisor of outfitting shall have the following powers and duties: (1) To carry out and cause enforcement of all provisions of this act.

(2) To prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. Such pamphlet shall be available for free distribution as early as possible during each calendar year, but not later than the second Friday in March of each year. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current year. The costs and expenses of the publication of said pamphlet shall be paid from the state fish and game fund.

(3) To co-operate with the federal government through its appropriate agencies or instrumentalities in matters of mutual concern regarding the business of outfitting and guiding in Montana.

(4) To establish a minimum of two (2) meetings annually with the advisory council.

(5) To consult with the advisory council to develop policy concerning the administration of outfitting and to transmit the council recommendations to the fish and game commission.

History: En. Sec. 4, Ch. 221, L. 1971.

26-912. Establishment of outfitter's council — election of members — terms of office—powers and duties. (1) There shall be established an advisory council which shall be composed of one (1) licensed outfitter

from each of the seven (7) fish and game administrative districts. Each council member shall be selected by the licensed outfitters residing in that district by election at an annual meeting of such outfitters to be held in the district headquarters. A majority vote of all such outfitters in attendance at such meeting shall determine the council member from that district. Such meeting shall be held at 1:00 p.m. on the second Friday of March. Each member shall be elected for a three (3) year term and shall take office the day elected. At such election, an alternate council member shall also be elected to serve in the event the first elected delegate is unable to act. The first members elected from districts one (1) and seven (7) shall each hold office for a term of one (1) year; the first members elected from districts two (2) and six (6) shall each hold office for a term of two (2) years; members elected from districts three (3), four (4) and five (5) shall each hold office for a term of three (3) years. The said advisory council shall be designated as the "Montana outfitter's council."

(2) The advisory council shall have the authority and duty to make recommendations to the state fish and game commission and the fish and game director as to the following:

(a) Outfitter standards.

(b) Rules of procedures and regulations to carry into effect the provisions of this act including but not limited to regulations prescribing all requisite qualifications for license, including training, experience, knowledge of rules and regulations of governmental bodies pertaining to outfitting and condition and type of gear and equipment.

(c) Hearings and proceedings to suspend or revoke licenses of outfitters and/or guides and to recommend suspension or revocation of licenses for due cause.

(d) Any and all reasonable rules and regulations which are deemed necessary, and which are not in conflict with this act, for the express purpose of safeguarding the health, safety and welfare of those persons utilizing the services of outfitters, and for the protection of landowners and the general public.

History: En. Sec. 5, Ch. 221, L. 1971.

26-913. Rules and regulations for outfitting and guiding. (1) The fish and game commission shall have the authority to adopt, promulgate and enforce rules and regulations recommended by the advisory council as provided in section 5 [26-912] and all other rules and regulations it may deem proper for the proper administration and enforcement of the provisions of this act and the regulation of outfitting and guiding to provide for the services to the public.

History: En. Sec. 6, Ch. 221, L. 1971.

26-914. Requirement of license as outfitter or guide—services performed—standards. (1) No person shall act as an outfitter, professional guide or resident guide, or advertise as an outfitter, without first securing a license in accordance with the provisions of this act.

(2) Whenever an outfitter is engaged by any person, or a resident guide takes out nonresident friends, said outfitter or resident guide shall keep and submit records as required by the fish and game commission.

(3) Outfitters and their employees shall not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as an outfitter.

(4) Outfitters and resident guides utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter or resident guide intends to operate, and shall comply to environmental protection standards established for these lands.

(5) An outfitter shall not willfully and substantially misrepresent his facilities, prices, equipment, services or hunting.

(6) Outfitters and their employees shall take every reasonable measure to provide their advertised services to their clients.

History: En. Sec. 7, Ch. 221, L. 1971.

26-915. Application for license—contents—requirements and qualifications—fees. (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the fish and game commission which shall include:

(a) The applicant's full name, address and telephone number.

(b) The address of his principal place of business in the state of Montana.

(c) The amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application.

(d) The experience of the applicant, including years of experience as an outfitter or guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain.

(e) A signed statement of the licensed outfitter by whom the professional guide is to be employed, that the said guide is in fact, to be employed by such outfitter and stating that said outfitter recommends the applicant for his qualifications.

(f) A statement by a Montana fish and game warden to the fish and game director that the equipment listed on the application has been inspected by said warden and that the same is in fact, owned or used by the applicant and is in good operating condition and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant.

(g) A statement of the maximum number of guests to be taken at any one (1) time.

(h) Each new applicant who intends to outfit on a national forest must have the written approval of the rangers in whose district he will establish hunting camps, and such written approval shall accompany the application.

(i) Each application for a partnership, company or corporation must be in the name of one individual who qualifies under the provisions of this act.

(2) Each applicant for an outfitter's license shall meet the following requirements:

- (a) Be a competent person of good moral character.
- (b) Be a citizen of the United States and a resident of Montana for a full two (2) years, unless the residency requirement is waived by the fish and game commission.
- (c) Be at least twenty-one (21) years of age.
- (d) Be in such physical condition as to be able to perform his assigned or obligated duties.
- (e) To own or hold under written lease or to represent a company, corporation or partnership who owns or holds under written lease the equipment and facilities as is necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients. All equipment and facilities shall be subject to inspection at all reasonable times and places by the fish and game commission or its designated agent.
- (f) Pass a standard examination administered by the fish and game director, or an agent designated by him, which said examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The said examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

- (i) Fish and game laws and regulations.
- (ii) Practical woodsmanship.
- (iii) General knowledge of big game.
- (iv) Field preparation of trophies.
- (v) Care of game meat.
- (vi) Use of outfitter's gear as shown on the application.
- (vii) Knowledge of area and terrain.
- (viii) Knowledge of firearms.
- (ix) Federal and state regulations as applicable to outfitting.
- (x) Practical first aid.

(3) Each applicant for a professional guide's license shall meet the following requirements:

- (a) Be a competent person of good moral character.
- (b) Be a citizen of the United States and a resident of Montana as defined in this act.
- (c) Be eighteen (18) years of age or older and in such physical condition as to be able to perform his assigned duties.
- (d) Be endorsed and recommended by an outfitter with a valid license.
- (4) A resident guide shall have been issued a valid resident wildlife conservation license.

(5) Residence requirements for procuring an outfitter's license are hereby waived as to persons who are citizens of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana except for fee.

For the purpose of obtaining a guide's license only, nonresident pro-

professional guides employed by resident outfitters shall be considered resident professional guides.

(6) Applications shall be made to and filed with the fish and game director and accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied. The fee is to be used in investigation of the applicant, in enforcement of this act, and for administrative costs.

Resident outfitter's license fee	\$ 50.00
Resident professional guide's fee	\$ 15.00
Resident guide's license is a valid Montana wildlife conservation license.	
Nonresident outfitter's license fee	\$150.00
Nonresident professional guide's fee	\$100.00

Provided, however, that if the nonresident resides in a state requiring residents of the state of Montana to pay in excess of said amounts for similar license, the fee for such nonresident outfitters or guides shall be the same amount as such higher fee charged in the state where such nonresident resides.

(7) The fish and game director in his discretion may cause to be made such additional investigation and inquiry, relative to the applicant for outfitter's license and an applicant's qualifications as he shall deem advisable. Final decision as to issuance of renewal applications shall be made not later than thirty (30) days from the date of receipt of the completed application for renewal of license, and upon a new application, not later than ninety (90) days from the date of receipt of the completed application for license. A licensee in good standing shall be entitled to a new license for the ensuing license year upon complying with the provisions of section 8 [this section], but is exempt from having to retake the written examination.

History: En. Sec. 8, Ch. 221, L. 1971.

26-916. Kinds of license issued. (1) After receipt of the application and when all the conditions and requirements of this act have been satisfied, the fish and game director shall issue either of the following licenses depending upon his determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application.

(a) A general license authorizing him to perform all the functions of an outfitter as that term is defined in section 26-904, R.C.M., 1947.

(b) A special license authorizing him to perform only the function of outfitting listed on the license. The license shall be in the form prescribed, and shall be valid for the licensing year in which issued. If the application is denied, the fish and game director shall notify the applicant, in writing, of the reasons for the denial, and if the reasons are corrected, a license shall be issued upon reapplication thereof.

(2) For the purpose of this act, a person may serve as a professional guide under his employer's license after submitting his application with the proper license fee until license is issued or for ten (10) days after notification of rejection of license.

(3) To be valid, a professional guide license must bear the signature and outfitter's license number of an endorsing outfitter and is valid only while the holder of such license is employed by an endorsing outfitter.

History: En. Sec. 9, Ch. 221, L. 1971.

26-917. Deposit of fees. All fees collected under the provisions of this act shall be deposited as provided in section 26-121, R.C.M., 1947.

History: En. Sec. 10, Ch. 221, L. 1971.

26-918. Grounds for suspension or revocation of license. Every license may be suspended or revoked by the fish and game commission upon any of the following grounds:

- (1) Fraud or deception in procuring a license.
- (2) Fraudulent, untruthful or misleading advertising.
- (3) Conviction of a felony, until civil rights are restored.
- (4) Repeated convictions of violations of the fish and game laws of the state of Montana.
- (5) A substantial breach of any written contract with any person utilizing his services as pertains to this act.
- (6) The willful and repeated employment of an unlicensed guide by an outfitter.
- (7) For failure to comply with the provisions of this act.
- (8) Gross negligence or misconduct while acting as an outfitter or guide.

History: En. Sec. 11, Ch. 221, L. 1971.

26-919. Procedure for revocation or suspension of license. Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based and must be signed, and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the fish and game director. Thereupon, the fish and game director shall initiate a preliminary investigation of all facts in connection with the charge. A copy of all information shall be transmitted to the advisory council. The advisory council shall within sixty (60) days recommend the action to be taken. If the accusation be deemed to be unfounded or trivial, the fish and game director shall dismiss the same and report his action to the fish and game commission and will advise the accused and the complaining party of the action. Should the fish and game director determine the charge or recommendation to have good cause and to be sufficiently founded, he shall recommend to the fish and game commission that the same be approved and the revocation or suspension be effected. The fish and game director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon the licensee involved, not less than twenty (20) days prior to the day set for hearing thereon which said hearing shall be before the fish and game commission at a time and place set by such commission. At the hearing the licensee involved may be repre-

sented by counsel. After full, fair and impartial hearing, the fish and game commission may suspend the accused's license for a period not to exceed (3) years or may order the license revoked or may dismiss the charge or recommendation based upon the facts shown at the hearing. A revoked or suspended license may be reissued or reinstated at the discretion of the commission.

History: En. Sec. 12, Ch. 221, L. 1971.

26-920. Appeal to district court. Any person who feels aggrieved by any action of the fish and game commission in denying the issuance of a license, or the suspension or revocation of his license as an outfitter or guide, may appeal to the district court of the county of his residence, within sixty (60) days after the entry of the order by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the commission and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo and, upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the commission or take such other action as the court may deem just and proper.

History: En. Sec. 13, Ch. 221, L. 1971.

26-921. Persons authorized to enforce act. The supervisor of outfitting, state fish and game wardens and all peace officers of the state of Montana shall have the authority to enforce the provisions of this act.

History: En. Sec. 14, Ch. 221, L. 1971.

26-922. Criminal penalty for violations. In addition to penalties herein provided, any person violating provisions of this act shall be punished as provided in section 26-324, R.C.M., 1947.

History: En. Sec. 15, Ch. 221, L. 1971.

Repealing Clause

Section 16 of Ch. 221, Laws 1971 read "Sections 26-901, 26-902 and 26-303.2, R. C.M., 1947, are repealed."

able, and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Effective Date

Separability Clause

Section 17 of Ch. 221, Laws 1971 read "The provisions of this act shall be sever-

Section 18 of Ch. 221, Laws 1971 read "This act shall be effective May 1, 1972."

CHAPTER 11—GAME PRESERVES, MIGRATORY BIRD RESERVATIONS

Section

26-1128. Gates of the Mountain Game Preserve.

26-1128. Gates of the Mountain Game Preserve. Beginning in Section 2, Township 12 North, Range 3 West, at the southeast corner of upper Holter Lake and proceeding westerly along the northern shoreline of said upper Holter Lake in the Gates of the Mountains area located in Lewis and Clark County, Montana, and then northerly along Stoney Point Beacon Road, then northerly along the power line to said beacon, then along

the bulldozer road to the point of the ridge in Section 23, Township 13 North, Range 3 West, then northerly to the Missouri River, then easterly across said river and lake to the Forest Service Boundary to the Wilderness Boundary, then south following the Wilderness Boundary to the southeast corner of Section 1, Township 12 North, Range 3 West, then west back to the upper Holter Lake to the point of beginning, intending hereby to include in said game preserve all that territory adjacent to the Gates of the Mountains area, shall be called and known as the Gates of the Mountains Game Preserve.

It shall be unlawful for any person to shoot, kill, capture or destroy or in any way injure any bird or fur-bearing animal in said area or to interfere with their eggs or nests or to shoot at, wound or kill any bird or fur-bearing animal within said preserve. Said area shall be closed to all hunting at all times.

History: En. Sec. 1, Ch. 115, L. 1971. a game preserve in the area of the Gates of the Mountains, Lewis and Clark County, Montana.

Title of Act

An act to provide for the creation of

CHAPTER 12—PERMITS FOR BREEDING GAME BIRDS AND ANIMALS
—OTHER REGULATIONS

Section

- 26-1201. Permit for breeding and propagating game birds and animals and fur-bearing animals—migratory birds excluded.
- 26-1205. Regulation of roadside menageries or zoos—definitions.
- 26-1206. Permits—adoption and enforcement of regulations.
- 26-1207. Permit required—application—fee—expiration and renewal—inapplicable to governmental entity—misdemeanor—compliance with standards—transferring permit.
- 26-1208. Permit for additional animals—application—conditions of issuance—capture of wild animals—ownership to remain in state—regulation of sales and transfers.
- 26-1209. Menagerie permit not a commercial game propagating permit—restrictions on disposal of birds or animals and offspring.
- 26-1210. Inspection—permit revocation—redemption of wildlife.
- 26-1211. Enforcement—penalty—confiscation or disposal of illegally kept animals—appeal.
- 26-1212. Disposal of fines, bonds or penalties—fees.

26-1201. (3777) Permit for breeding and propagating game birds and animals and fur-bearing animals—migratory birds excluded. Any person, or persons, firm, company or corporation before engaging in the business or occupation of propagating, owning and controlling game animals except buffalo, game birds (except migratory game birds), or fur-bearing animals of the state of Montana, shall first procure a game or fur farm permit from the state fish and game director. The owning, controlling, propagating, salvage, banding, transportation, shipping, import, export, acquisition and scientific collecting of migratory game birds shall be in compliance with regulations of the commission adopted pursuant to section 26-320.

Such game or fur farm permit shall be issued to responsible applicants who own or lease the premises on which their operations are to be conducted, when such applicant has so fenced the place where such game or fur farm is located, with fencing material, approved by the state fish and game director, so that no wild or public animals of like species can mix with those confined.

Foundation stock for a fur farm may be obtained from the state fish and game commission by a free permit authorizing game farm permit holders to capture a designated number of fur-bearing animals, with the exception of beaver or marten, for breeding stock, under such rules and regulations as the commission shall prescribe. Such fur-bearing animals captured under permit shall not be sold or pelted for the period of one (1) year after their capture and the skins or pelts of any fur-bearing animals accidentally killed during their capture or for the period of one (1) year thereafter shall be turned over to the state fish and game director.

A charge shall be made for the capture of each beaver or marten by fur farm permit holders for foundation stock, under authorization of the state fish and game director as follows:

Beaver—fifteen dollars (\$15) each.

Marten—twenty-five dollars (\$25) each.

The skins, pelts or products of such beaver and marten on game or fur farms shall be tagged individually with tags purchased from the commission for a fee of five cents (5¢) each. Each game farm or fur farm shall be open to complete inspection by the state fish and game director or his wardens at any reasonable time, inclusive of the whole area thereof, all stock thereon, and all structures, pens, and other devices thereon. Game farm or fur farm permits issued under the provisions of this act shall be valid during the time such game or fur farm is operated and conducted according to law, provided that on or before January 31 of each year a report shall be submitted by the licensee to the state fish and game director, showing the numbers and species of game or fur-bearing animals on hand on January 1, preceding, and the number and kinds of animals pelted, bought or sold during the year.

Any person or persons, except as herein provided, who, at any time, in any part of the state of Montana, without the consent of the owner or caretaker of any enclosure within which fur-bearing animals are kept for breeding purposes, and on the fence of which enclosure are kept posted notices forbidding trespassing on the premises where the said animals are kept, which notices must be plainly discernible at a distance of not less than twenty-five (25) yards therefrom, shall pass within the said fence or such enclosure or climb over, break or cut through the same for the purpose of entering the said enclosure, etc., or for any other purpose whatsoever, shall be guilty of a misdemeanor, and liable to the penalty hereinafter provided.

Any person or persons, firm, company or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana shall apply for and be issued free of charge a numbered certificate of identification for such fur farm, which certificate shall be nontransferable and valid for the life of the business; provided, no other provisions of this section shall be construed to or shall in any manner affect such person, or persons, firm, company or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R. C. M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971.

Amendments

The 1971 amendment inserted "except buffalo" in the first sentence of the first paragraph; and made minor changes in phraseology.

26-1205. Regulation of roadside menageries or zoos—definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "Commission" means the Montana fish and game commission;

(2) "Roadside menagerie or zoo" means any place where one (1) or more wild animals, including birds, reptiles, and the like are kept in captivity, for the evident purpose of exhibition or attracting trade, but does not include the exhibition of any animal by any educational institution or in any zoological garden chartered as a nonprofit corporation by the state nor animals exhibited by any traveling theatrical exhibition or circus;

(3) "Wild animal" means any animal wild by nature as distinguished from the common domestic animals, whether or not such animal was bred or reared in captivity, and includes birds and reptiles;

(4) "Director" means the director of the state fish and game commission.

History: En. Sec. 1, Ch. 130, L. 1969.

commission to control and regulate roadside menageries or zoos.

Title of Act

An act to require the fish and game

26-1206. Permits—adoption and enforcement of regulations. (1) The commission shall grant permits for roadside menageries or zoos.

(2) The commission shall adopt and enforce reasonable regulations for the housing, care, treatment, feeding and sanitation of animals kept in roadside menageries, and for the protection of the public from injury by such animals.

History: En. Sec. 2, Ch. 130, L. 1969.

26-1207. Permit required—application—fee—expiration and renewal—inapplicable to governmental entity—misdemeanor—compliance with standards—transferring permit. (1) It is unlawful for any person to operate a roadside menagerie without a permit. Application for a permit shall be made to the director on a form prescribed by him. The annual permit fee for five (5) or less animals shall be ten dollars (\$10.00). The annual permit fee for more than five (5) animals shall be twenty-five dollars (\$25.00). Permits shall expire on December 31, but may be renewed upon payment of the annual fee. This section shall not apply to the United States, the state of Montana, or any county or city. Any person who shall subscribe to any false statement in application for a permit shall be guilty of a misdemeanor.

(2) No permit shall be granted by the commission until it has satisfactorily verified that the provisions for housing and caring for such animals and for protecting the public are proper and adequate and in accordance with the standards established by the commission.

(3) A permit is not transferable to another person unless the roadside menagerie or zoo to which it pertains is also transferred to the same person. The director's approval must be obtained prior to such permit transfer and prior to a transfer of any wild animals held under the permit.

History: En. Sec. 3, Ch. 130, L. 1969.

26-1208. Permit for additional animals—application—conditions of issuance—capture of wild animals—ownership to remain in state—regulation of sales and transfers. It is unlawful to obtain wild animals for a menagerie or zoo by capture from the wild or by purchase except in accordance with the terms of a permit. Application for such permit shall be made to the director on a form prescribed by him. After investigation by the department, the director may issue such permit without charge if he finds (a) that all provisions of this act and of the commission regulations are complied with by the applicant; and (b) that the number and species of wildlife desired is not excessive under the circumstances. If wild animals are to be obtained by capture, the permit shall designate the number and the means of capture, but ownership of the wild animals captured shall remain in the state of Montana. Nongame animals may be bought, sold or transferred under such regulations as the fish and game commission may prescribe.

History: En. Sec. 4, Ch. 130, L. 1969.

26-1209. Menagerie permit not a commercial game propagating permit—restrictions on disposal of birds or animals and offspring.—A menagerie permit cannot be construed as a commercial game propagating permit and the holder of such permit must not, under any circumstances, sell or attempt to sell any of the original game birds or game animals or the progeny thereof. A game propagating permit is required to propagate and sell game birds and game animals for commercial purposes. A fur-farming permit is required to propagate and sell fur-bearing animals. All offspring of game animals, game birds or fur-bearing animals are the property of the state wherein the menagerie is located, and must be disposed of by the state.

History: En. Sec. 5, Ch. 130, L. 1969.

26-1210. Inspection — permit revocation — redemption of wildlife. All roadside menageries or zoos and all equipment used in connection therewith shall be open to inspection at all reasonable hours. If upon inspection it is found that the menagerie or zoo is not being operated in accordance with this act or with the commission regulations, the director shall revoke the permit without right of renewal and shall redeem possession of all wildlife obtained by capture or unlawful propagation.

History: En. Sec. 6, Ch. 130, L. 1969.

26-1211. Enforcement—penalty—confiscation or disposal of illegally kept animals—appeal. The provisions of this act shall be enforced by any state fish and game warden or any other legally authorized officer. Any person violating the provisions of this act shall, upon conviction, be punished by a fine of not more than two hundred fifty dollars (\$250.00), imprison-

ment for a period of not more than ten (10) days, or both, and at the discretion of the court the permit and all rights and privileges inherent therein may be forfeited. Any animals being kept in violation of any section of this act may be confiscated or ordered disposed of at the discretion of the state fish and game director. The permittee may appeal to the commission within twenty (20) days of the date of the order to confiscate and the commission shall hold a hearing on such an appeal and the decision of the commission shall be final.

History: En. Sec. 7, Ch. 130, L. 1969.

26-1212. Disposal of fines, bonds or penalties—fees. Fines, bonds or penalties shall be administered and disposed of in accordance with the provisions of section 26-1001. Fees obtained under this act shall be deposited with the state treasurer and credited to the earmarked revenue fund, fish and game account.

History: En. Sec. 8, Ch. 130, L. 1969.

CHAPTER 15—CONSTRUCTION AND HYDRAULIC PROJECTS AFFECTING FISH AND GAME

Section

- 26-1502. Notice of projects to be given fish and game commission—contents of notice.
- 26-1505. Refusal by applicant to modify plans—arbitration of disputes.
- 26-1507. Irrigation projects exempt.
- 26-1508. Reports and objections to federal actions injuring fish and wildlife—files and records.

26-1502. Notice of projects to be given fish and game commission—contents of notice.

History: En. Sec. 2, Ch. 10, L. 1965;
amd. Sec. 1, Ch. 133, L. 1971.

Compiler's Notes

Laws 1971, Ch. 133 purported to amend this section but made no change. For section, see parent volume.

26-1505. Refusal by applicant to modify plans—arbitration of disputes. (1) * * * [Same as parent volume.]

(2) Upon receipt of such notice of refusal, the fish and game commission shall determine if it wants the disagreement arbitrated. Within ten (10) days after an affirmative determination, and after notice to the applicant, the fish and game commission shall notify, in writing, all district judges of the judicial district or districts in which the project is located that an arbitration board is needed. Within five (5) days of receipt of notification, such judges shall appoint three (3) people from the county or counties in which the project is located to an arbitration committee. Within ten (10) days after the committee is appointed, it shall meet, hear testimony from all the parties concerned, and issue a decision signed by at least two (2) members of the committee. The decision shall be binding on all parties concerned. The actual and necessary expenses of the arbitrators shall be divided equally among the agencies involved.

History: En. Sec. 5, Ch. 10, L. 1965;
amd. Sec. 2, Ch. 133, L. 1971.

Amendments

The 1971 amendment substituted "ap-

plicant" for "for other agency or agencies involved" in the second sentence of subsection (2); and substituted "parties concerned" for "agencies concerned" in the fourth sentence of subsection (2).

26-1507. Irrigation projects exempt. This act shall not apply to any irrigation district project or any other irrigation system.

History: En. Sec. 7, Ch. 10, L. 1965; amd. Sec. 3, Ch. 133, L. 1971.

project presently operating, or that may be constructed in the future or" after "shall not apply"; and substituted "system" for "project" at the end of the section.

Amendments

The 1971 amendment deleted "to any state water conservation board irrigation

26-1508. Reports and objections to federal actions injuring fish and wildlife—files and records. The Montana state fish and game department shall observe and report to the Montana state fish and game commission concerning acts and omissions on the part of the government of the United States and its agencies within the state of Montana which do, will or might affect adversely the fish and wildlife resources, including but not limited to the fishing streams within the state, and upon receiving such reports, the said commission shall without delay send formal notification in writing, by certified mail, to the appropriate federal agency or agencies involved, setting forth in detail the appropriate objections of the state of Montana to the acts and omissions aforesaid. Said commission shall keep complete files and records, available for public inspection, of all matters and things done, and all communications and correspondence sent and received, pursuant to this section.

History: En. Sec. 4, Ch. 133, L. 1971.

Title of Act

An act amending sections 26-1502, 26-1505, and 26-1507, R. C. M., 1947, and adding new sections establishing the policy of the state of Montana on protection of

fishing streams, providing for submission of plans for construction and hydraulic projects affecting such streams to the Montana fish and game commission, for review of such plans and exempting certain projects and parties.

CHAPTER 17—IMPORTATION OF SALMONID FISH OR EGGS

Section

- 26-1701. Importation of salmonid fish or eggs unlawful unless certified free of infectious organisms.
- 26-1702. Infectious organisms dead—certification unnecessary.
- 26-1703. Information required in certificate.
- 26-1704. Rules and regulations—personnel.
- 26-1705. Penalty—misdemeanor.

26-1701. Importation of salmonid fish or eggs unlawful unless certified free of infectious organisms. It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless such importations are shipped direct from the hatchery where reared to destination, and are accompanied by a written certification that the importation or source is free of protozoan myxosoma cerebralis, the causative agent of so-called "whirling disease," and such other infectious organisms as the state fish and game commission may specify. Such certification shall be made in the state of origin by a fish pathologist designated for this purpose by the United States secretary of the interior or by the state fish and game director. Certification of the source may be by inspection of the hatchery of origin conducted annually or at such other times as the state fish and game director may order. If a copy of a current inspection report, certifying that the hatchery of origin is free of protozoan myxosoma cere-

bralis, and such other infectious organisms as the state fish and game commission may direct, is not attached to each shipment from such hatchery, then each shipment must be inspected and certified.

History: En. Sec. 1, Ch. 10, L. 1969.

Title of Act

An act to provide that salmonid fish

and eggs imported into Montana be certified free of certain diseases, and providing an effective date.

26-1702. Infectious organisms dead — certification unnecessary. Nothing in this act shall restrict the importation and transportation of dead salmonid fish or eggs when such fish or eggs have been processed or prepared in a manner whereby all spores of the protozoan myxosoma cerebralis, and such other infectious organisms as the state fish and game commission may specify, have been killed. Salmon caught and brought directly into North America and transported into Montana for processing or sale, or any salmonid caught wild in North America shall be exempt from the requirement for certification.

History: En. Sec. 2, Ch. 10, L. 1969.

26-1703. Information required in certificate. The certificate required by this section shall consist of a statement in the English language, printed or typewritten, stating that the shipment of fish or eggs is free from protozoan myxosoma cerebralis as determined by the methods outlined in Fish Disease Leaflet 9 printed July, 1968 by the bureau of sport fisheries and wildlife, United States department of the interior, and free of such other organisms as determined by such other methods as the state fish and game commission shall direct. Certificates of individual shipments will contain (1) the date and city of shipment in the state of origin and the anticipated date of arrival and city of destination in Montana, (2) carrier and carrier identification number, or truck license number if shipped by hatchery truck, (3) bill of lading number or airway bill number, if applicable, and (4) the handwritten signature, in ink, of the authorized certifying officer, and such other information as the state fish and game commission may specify.

History: En. Sec. 3, Ch. 10, L. 1969.

26-1704. Rules and regulations—personnel. The state fish and game commission may promulgate such rules and regulations and may employ such personnel for testing and inspection as are necessary to carry out the provisions of this act.

History: En. Sec. 4, Ch. 10, L. 1969.

26-1705. Penalty—misdemeanor. Any person violating any provision of this act shall be deemed guilty of a misdemeanor and shall be punished as prescribed in section 26-324.

History: En. Sec. 5, Ch. 10, L. 1969.

Effective Date

Section 6 of Ch. 10, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

TITLE 27—FOOD AND DRUGS

Chapter

2. Pesticides, 27-213 to 27-245.
3. State board of food distributors—regulation of food stores and foodstuffs, 27-306.
4. Supervision of milk industry—state milk control board, 27-403, 27-406 to 27-411, 27-414.1, 27-414.2.
6. Food service establishments, markets and manufacturers, 27-612.
7. Food, Drug and Cosmetic Act, 27-702, 27-703, 27-721.
8. Flour and bread, 27-801 to 27-805.
9. Dispensing of drugs by practitioners, 27-901 to 27-906.

CHAPTER 2—PESTICIDES

Section

- 27-213. Short title.
- 27-214. Declaration of purpose.
- 27-215. Administration.
- 27-216. Definitions.
- 27-217. Registration.
- 27-218. Prohibited acts.
- 27-219. Sampling and analysis.
- 27-220. Embargo.
- 27-221. Commercial applicator.
- 27-222. Application for applicator's license.
- 27-223. Commercial operator.
- 27-224. Applicators and operators examination.
- 27-225. Dealers.
- 27-226. Dealers examination.
- 27-227. Retail noncommercial sale of pesticides.
- 27-228. Farm applicators.
- 27-229. Licensing nonresidents.
- 27-230. Revocation of licenses and permits.
- 27-231. Government agencies.
- 27-232. Liability.
- 27-233. Report of loss or damage—effect of failure to report.
- 27-234. Rules and regulations.
- 27-235. Hearings.
- 27-236. Administrative appeals.
- 27-237. Judicial review.
- 27-238. Subpoena power of department of agriculture.
- 27-239. Public information.
- 27-240. Advisory committee.
- 27-241. Educational programs.
- 27-242. Co-operation with other agencies.
- 27-243. Enforcement.
- 27-244. Discarding pesticides.
- 27-245. Violation.

27-201 to 27-212. Repealed.

Repeal

Sections 27-201 to 27-212 (Secs. 1 to 12, Ch. 263, L. 1947; Secs. 1 to 8, Ch. 239, L. 1953; Sec. 1, Ch. 218, L. 1965; Sec. 220,

Ch. 197, L. 1967), relating to insecticides, fungicides, rodenticides, herbicides and other economic poisons, were repealed by Sec. 35, Ch. 403, Laws 1971.

27-213. Short title. This act may be cited as the Montana Pesticides Act.

History: En. Sec. 1, Ch. 403, L. 1971.

Title of Act

An act controlling the distribution, sale, application, disposal and transportation of pesticides and devices; creating a tem-

porary advisory committee; providing registration of pesticides and licensing of applicators; providing procedure for appeals; providing penalties and an effective date.

27-214. Declaration of purpose. The control of pesticides and their use is essential for the protection of man and his environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vector-borne diseases. However, the protection of man and his essential needs—water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides which are potentially dangerous—is in the public interest now and in the future. Therefore, it is deemed necessary to provide for the control of pesticides.

History: En. Sec. 2, Ch. 403, L. 1971.

27-215. Administration. This act shall be administered by the Montana state department of agriculture.

History: En. Sec. 3, Ch. 403, L. 1971.

27-216. Definitions. For the purpose of this act unless the context clearly indicates otherwise:

(1) "Active ingredient" means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

(b) In the case of a plant regulator, an ingredient which acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or the produce thereof.

(c) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(d) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" shall apply to any pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the article has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(4) "Applicator" means any person who applies pesticides by any method.

(a) "Commercial applicator" means any person who, in this state, by contract or for hire applies by aerial, ground, or hand equipment pesticides to any land, plants, animals, waters, structures, or vehicles.

(b) "Commercial operator" means any person who applies pesticides under the supervision of a commercial applicator.

(c) "Farm applicator" means a person applying pesticides to his own crops or land.

(d) "Home, yard, garden, home orchard, trees or lawn applicator" means a person applying pesticides to his own home, yard, garden, home orchard, trees or lawn.

(5) "Beneficial insects" means those insects which, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation or which act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commissioner" means the commissioner of agriculture.

(7) "Crop" means a food intended for human or animal consumption or any fiber product.

(8) "Dealer" means any person who sells, wholesales, offers, or exposes for sale, exchanges, barter, or gives away within this state any pesticide except those pesticides which are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes and lawn.

(9) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(10) "Department of agriculture" means the Montana state department of agriculture.

(11) "Department of health" means the Montana state department of health.

(12) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(13) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests but not equipment used for the application of pesticides.

(14) "Environment" means the soil, air, water, plants, and animals.

(15) "Equipment" means any equipment or combination of equipment used in the actual application of pesticides, including such types of equipment as aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living man or other animals.

(17) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient which is not an active ingredient.

(20) "Ingredient statement" means either:

(a) A statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) A statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the pesticide, (except section 4 (20) (a) [subdivision (20) (a) of this section] shall apply if the preparation is highly toxic to man, determined as provided in section 22 [27-234] of this act); and, in addition to section 4 (20) (a) or (b) [subdivision (20) (a) or (b) of this section] in case the pesticide contains arsenic in

any form, a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, as, for example beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(23) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide or device or any of its containers or wrappers.

(b) Accompanying the pesticide or device at any time.

(c) To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate nonmisleading reference is made to current official publications of the United States environmental protection agency, departments of agriculture, interior, or health, education and welfare, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" shall apply:

(a) To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

(b) To any pesticide:

(i) If it is an imitation of or is offered for sale under the name of another pesticide.

(ii) If its labeling bears any reference to registration under this act.

(iii) If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public.

(iv) If the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man or undue hazard to the environment.

(v) If the label does not bear an ingredient statement on that part of the immediate container and on the outside or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase.

(vi) If any word, statement, or other information required by or under the authority of this act to appear on the labeling is not prominently

placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(vii) If, in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living men or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

(viii) In the case of a plant regulator, defoliant, or desiccant which, when used as directed, is injurious to living man or other vertebrate animals or vegetation to which it is applied, or to the person applying such pesticide. Physical or physiological effects on plants or parts thereof are not deemed to be injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform or sac-like bodies covered with cuticle, and inhabiting soil, water, animals, plants, or plant parts; may also be called nemas or eelworms.

(28) "Official sample" means any sample of pesticide or device taken by the department of agriculture or its authorized representative.

(29) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, or body politic, or any organized group of persons whether incorporated or not; and includes any trustee, receiver, assignee, or similar representative thereof.

(30) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest of which the commissioner may declare to be a pest.

(31) "Pesticide" means:

(a) Any substance or mixture of substances, including any living organism or any product derived therefrom, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, that may infect, or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department of agriculture may declare to be a pest;

(b) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and,

(c) Any other substances intended for such use as may be named by the department of agriculture by regulation after calling a public hearing for such purpose.

(32) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(33) "Registrant" means the person registering any pesticide or device pursuant to the provisions of this act.

(34) "Restricted use pesticide" means any pesticide, including highly toxic pesticides, which the department of agriculture has found and determined, subsequent to a hearing, to be injurious when used in accordance with registration, label, directions and cautions to persons, beneficial insects, animals, crops or the environment other than the pests it is intended to prevent, destroy, control or mitigate.

(35) "Retailer" means any person who sells, offers, or exposes for sale, exchanges, barter, or gives away within this state any pesticide for home, yard, lawn and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animals.

(37) "Weed" means any plant or part thereof which grows where not wanted.

History: En. Sec. 4, Ch. 403, L. 1971.

27-217. Registration. Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state, shall be registered with the department of agriculture, and such registration shall be renewed annually by the manufacturer or formulator of the pesticide. (1) The department of agriculture shall register all approved pesticides and those so registered shall be subject to registration fees and all other provisions of this act. All registrations of pesticides shall expire on December 31, following date of issuance, unless otherwise terminated.

(a) The applicant for registration shall file with the department of agriculture a statement including:

(i) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant.

(ii) A complete copy of the label of the pesticide, the United States environmental protection agency registration number, if the pesticide is so registered, and a statement of all claims to be made for it including directions for use.

(iii) The trade and chemical name of the pesticide.

(iv) If requested by the department of agriculture, a full description of tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(b) Any pesticide imported into this state, which is subject to the

provisions of any federal act providing for the registration of pesticides and which has been duly registered under the provisions of said act, shall be registered in the state, provided that the state may restrict the use and application of the pesticide by type of applicator, time and place and may establish special registrations of pesticides as outlined in sections 5 (6) [subdivision (6) of this section] and 22 (3) [27-234 (3)]. Provided that the annual registration fee is paid and registration information required by the department of agriculture is provided.

(c) The applicant shall pay an annual fee of ten dollars (\$10) for each pesticide registered, such fees to be deposited in the treasury of the state to the credit of the general fund.

(2) The department of agriculture, whenever it deems it necessary in the administration of this act, may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department of agriculture that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 6 [27-218] of this act, it shall register the article.

(3) If it does not appear to the department of agriculture that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this act, it shall notify the applicant of the manner in which the articles, labeling, or other material required to be submitted fails to comply with the act so as to afford the applicant an opportunity to make the necessary corrections. If upon receipt of such notice, the applicant does not make the corrections, the department of agriculture may refuse to register the article. The department of agriculture in accordance with the procedures specified by the department of agriculture, may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with the provisions of this act. Whenever an application for registration is refused or the department of agriculture proposes to suspend or cancel a registration the registrant may appeal to the department of agriculture as provided for in section 24 [27-236].

(4) The department of agriculture shall review all registered pesticides at least every two (2) years and make appropriate recommendations to the commissioner.

(5) Notwithstanding any other provision of this act, registration is not required in the case of a pesticide shipped from one plant within the state to another plant within the state by the same person.

(6) (a) The departments of health, agriculture and fish and game shall review all applications for registration of a pesticide and/or device submitted to the department of agriculture. The department of agriculture shall provide the departments of health and fish and game with a complete copy of the application, related correspondence and a statement of the department of agriculture's proposed action on the application. The departments of health and fish and game shall approve or disapprove the application within three (3) days after the receipt of the application. If the departments of health, agriculture and fish and game are in agreement with

the proposed registration, the department of agriculture shall proceed with its registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide and/or device if two (2) of the departments approves of the proposed registration, the commissioner shall proceed with the registration.

(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the agencies cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and fish and game.

(d) Following the interagency conference, and if requested, the administrative hearing, the proposed registration of a pesticide or device has not been resolved, the commissioner of agriculture shall appoint an advisory committee as outlined in section 28 [27-240] to resolve by majority vote the registration of any pesticide. The advisory committee's recommendations on the registration shall be accepted by the agencies and implemented by the department of agriculture.

History: En. Sec. 5, Ch. 403, L. 1971.

27-218. Prohibited acts. (1) It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of section 5 [27-217] of this act, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration, or if registration or reregistration has been refused, revoked, cancelled or suspended. The department of agriculture may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product when such change does not adversely affect the product for its intended use and if proper application therefor is made.

(b) Any pesticide, unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the manufacturer, registrant, or person for whom manufactured.

(ii) The trade and chemical name, brand, or trademark under which said article is sold.

(iii) The net weight or measure of the content; however, subject to such reasonable variations as the department of agriculture may permit.

(c) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in section 22 [27-234]

of this act, unless the label shall bear, in addition to any other matter required by this act:

- (i) The skull and crossbones.
- (ii) The word "poison" prominently in red on a background of distinctly contrasting color.
- (iii) A statement of an antidote for the pesticide.
- (d) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this act, or any other white powder pesticide which the department of agriculture, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the environment and the feasibility of such coloration or discoloration, shall, by regulations, require to be distinctly colored or discolored, unless it has been so colored or discolored. The department of agriculture may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such use is not necessary for the protection of the public health and the environment.

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded.

(2) It shall be unlawful for any person to:

(a) Detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this act or regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this act.

(b) Uses for his own advantage or to reveal, other than to the department of agriculture or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians, or to veterinarians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 5 [27-217] of this act.

History: En. Sec. 6, Ch. 403, L. 1971.

27-219. Sampling and analysis. (1) The department of agriculture shall have the authority to sample, inspect, make analysis of pesticides or devices distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such pesticides or devices are in compliance with the provisions of this act. The department of agriculture is authorized with a warrant or the consent of the inhabitant or owner to enter upon any public or private premises including any vehicle of transport in order to have access to pesticides or devices and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department of agriculture from sources such as the Journal of the Association of Official Analytical Chemists.

History: En. Sec. 7, Ch. 403, L. 1971.

27-220. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device:

- (a) Is adulterated or misbranded;
- (b) Has not been registered under the provisions of section 5 [27-217] of this act;
- (c) Fails to bear on its label the information required by this act; or
- (d) Is a white powder pesticide and is not colored as required under this act;

he shall affix to such article a tag or other appropriate marking, giving notice that such pesticide or device is, or is suspected of being adulterated or misbranded, not registered, fails to bear the required information on the label, is a white powder pesticide and not colored as required, and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise, without such permission, or to remove or alter the tag or marking.

(2) When an article detained or embargoed under section 8 (1) [subdivision (1) of this section] has been found by such agent to be in violation, if after thirty (30) days the violation has not been resolved, he may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of section 8 (1) [subdivision (1) of this section], such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent; provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such pesticide or device shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department of agriculture. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant of the pesticide or device on the representation to the court by the department of agriculture that the article is no longer in violation of this act, and that the expenses of such supervision have been paid.

History: En. Sec. 8, Ch. 403, L. 1971.

27-221. Commercial applicator. It shall be unlawful for any person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. The application shall be accompanied by a fee of ten dollars (\$10). The

provisions of this section shall not apply to any person employed only to operate any equipment used for the application of any pesticide, and in which the person has no financial interest or other control over such apparatus other than its day-to-day mechanical operation for the purpose of applying any pesticide.

History: En. Sec. 9, Ch. 403, L. 1971.

27-222. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in section 9 [27-221] shall be made annually before applying pesticides in any calendar year from the department of agriculture.

(2) If the application is made for a license to engage in aerial application of pesticides, the applicant shall first meet all of the requirements of the federal aviation agency and the aeronautics commission of this state to operate the equipment described in the application.

History: En. Sec. 10, Ch. 403, L. 1971.

27-223. Commercial operator. The department of agriculture may establish procedures for controlling pesticide operators including necessary fees by regulation.

History: En. Sec. 11, Ch. 403, L. 1971.

27-224. Applicators and operators examination. (1) The department of agriculture shall publish and distribute or have available upon request such information as may be helpful to persons engaged in the application of pesticides, including information that may be required or which may appear upon any examination given to applicators and operators by the department of agriculture.

(2) The department of agriculture shall require an applicant for a license to show upon written examination that he possesses adequate knowledge concerning the proper use and application of pesticides under the classification for which he has applied. Provided that the applicator and operator may not be required to take a re-examination, upon renewal of licensing.

History: En. Sec. 12, Ch. 403, L. 1971.

27-225. Dealers. (1) It is unlawful for a dealer to sell, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. Pesticide fieldmen or salesmen not under supervision of a licensed dealer shall be licensed as a dealer.

(2) The dealer shall furnish the department of agriculture the names and addresses of its fieldmen and salesmen selling pesticides within the state. The application for a license shall be accompanied by a fee of ten dollars (\$10).

(3) The dealer shall require the purchaser of any restricted pesticide to exhibit their license or permit issued under authority of this act before completing a sale.

(4) Licensed dealers shall not be required to obtain a retail non-commercial license or pay the fee; however, all other provisions of section 15 [27-227] shall apply.

History: En. Sec. 13, Ch. 403, L. 1971.

27-226. Dealers examination. Each applicant applying for a dealer's license and/or his employee(s) in charge of pesticide sales shall be required to pass a reasonable examination administered by the department of agriculture. Dealers applying for relicensing may not be required to take an additional examination if they have met the department of agriculture's requirements.

History: En. Sec. 14, Ch. 403, L. 1971.

27-227. Retail noncommercial sale of pesticides. (1) The department of agriculture is authorized to designate the pesticides that may be sold in this state at retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department of agriculture may also limit the retail sale of such designated pesticides to quantities up to a specific number of pound(s) or gallon(s) and of such concentrations as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(2) Each pesticide retail outlet shall be required to obtain an annual license from the department of agriculture for purchasing and selling retail pesticides. The application for a license shall be accompanied by a minimum fee of ten dollars (\$10).

History: En. Sec. 15, Ch. 403, L. 1971.

27-228. Farm applicators. (1) The department of agriculture shall establish which are restricted use pesticides for agricultural use. Pesticides so restricted cannot be utilized by the farm applicator on commercial crops, land, or livestock, except as provided in (2) below.

(2) Farm applicators desiring to apply restricted use pesticides on commercial crops, land, or livestock may obtain an annual special use permit from the department of agriculture. The department of agriculture shall require the applicant to show upon written examination that he possesses adequate knowledge to use and apply restricted agricultural pesticides and the justification for their use on commercial crops, land or livestock.

Provisions of this act relating to licensing of farm applicators shall not apply to any farm applicator applying nonrestricted pesticides on his own land, or on lands of his neighbor's; PROVIDED, that:

(a) He operates farm property and operates and maintains pesticide application equipment primarily for his own use.

(b) He is not regularly engaged in the business of applying pesticides for hire and that he does not publicly hold himself out as a pesticide applicator.

(c) He operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his immediate neighbors.

History: En. Sec. 16, Ch. 403, L. 1971.

27-229. Licensing nonresidents. Any nonresident applying for a license under this act to operate in the state of Montana shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over such nonresident applicant; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be serviced as provided by law, shall not be required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The department of agriculture shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state.

History: En. Sec. 17, Ch. 403, L. 1971.

27-230. Revocation of licenses and permits. The department of agriculture shall establish the policy and procedures on the revocation of licenses or permits. The department of agriculture may refuse to grant, renew, or may revoke a license or permit, as the case may require when the department of agriculture is satisfied that the licensee or holder of a permit is not qualified to sell, use, or apply pesticides under the conditions in the locality in which he operates or has operated, or that he has committed any of the following acts, each of which is declared to be a violation of this act:

- (1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized.
- (2) Applied unapproved or illegal materials.
- (3) Operate in a faulty, careless, or negligent manner.
- (4) Operated faulty or unsafe equipment.
- (5) Refused or neglected to comply with the provisions of this act, the rules and regulations adopted hereunder, or of any lawful order of the department of agriculture.
- (6) Refused or neglected to keep and maintain the records required by this act, or to make reports when and as required.
- (7) Made false or fraudulent records or reports.
- (8) Operated equipment for the commercial application of a pesticide without having a license or permit.
- (9) Used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit.

Decisions of the department of agriculture relating to the issuing of licenses or permits may be appealed.

History: En. Sec. 18, Ch. 403, L. 1971.

27-231. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agency shall be subject to the provisions of this act and rules adopted thereunder concerning the application of pesticides. Applicators and operators operating equipment for the application of pesticides used by any state agencies, municipal corporations

or any governmental agencies shall be subject to the provisions of sections 9, 10, 11 and 12 [27-221, 27-222, 27-223 and 27-224] of this act and the department of agriculture shall issue a limited commercial applicator's or operator's license without a fee which shall be valid only when such applicators and operators are applying pesticides for such agencies. Provided, that the jurisdictional health officer, state veterinarian, their duly authorized representatives or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

History: En. Sec. 19, Ch. 403, L. 1971.

27-232. Liability. The department of agriculture shall within two (2) years after the effective date of this act, require from each commercial pesticide applicator proof of financial responsibility in amounts to be determined under such rules and regulations as made by the department of agriculture.

History: En. Sec. 20, Ch. 403, L. 1971.

27-233. Report of loss or damage—effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within thirty (30) days from the time the occurrence of the loss became known to him, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

- (a) Name and address of claimant.
- (b) Type, kind, and location of property alleged to be injured or damaged.
- (c) Date the alleged injury or damage occurred.
- (d) Name of person applying the pesticide and allegedly responsible for the loss or damage.
- (e) Name of the owner or occupant of the property for whom such pesticide application was made.

(2) The filing of such a report or the failure to file such a report shall not be alleged in any complaint which might be filed in a court of law, and the failure to file shall not be considered any bar to the maintenance of any criminal or civil action.

(3) The failure to file such a report shall not be a violation of this act. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by any person, the department of agriculture may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this act until such report is filed. The filing of such report shall not constitute institution of a civil or criminal suit in any court, state or federal.

History: En. Sec. 21, Ch. 403, L. 1971.

27-234. Rules and regulations. (1) The department of agriculture shall have authority to adopt by reference without a public hearing regulations adopted under the federal insecticide, fungicide, and rodenticide act, as amended; or after due public hearing, to adopt all rules and regulations necessary to carry out the provisions of this act.

(2) The rules and regulations may prescribe methods:

(a) Of registration, application, use or restricting use, prohibiting use, offering or exposing for sale, any pesticide.

(b) Of determining whether pesticides are highly toxic to man.

(c) Of determining standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of section 6 [27-218] of this act.

(d) Of licensing commercial applicators and operators, dealers, retailers, establishing methods of record keeping for applicators, operators, dealers, and retailers, and provide for the review of the records by the department of agriculture's authorized agent and the submission of the records to the department of agriculture upon written request.

(e) Of issuing farm applicator special use permits and the maintenance and submission of records by farm applicators issued special use permits.

(f) Of collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and/or devices.

(g) Of operating and maintaining equipment used by applicators.

(h) Of developing examinations which shall be held periodically throughout the state.

(i) Of establishing the form and content of all applications for licenses and permits.

(j) Of designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department of agriculture may also limit retail sale of pesticides, up to a specific number of pounds or gallons and the concentration as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) Of revoking licenses and permits.

(l) Of registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used.

(m) Of registering pesticide fertilizer and other chemical blends or in lieu of registration, establish licensing, inspection and fees for blending plants.

(n) Of establishing registration procedures for devices with a fee not to exceed five dollars (\$5) per type of device, specifying classes of devices to be registered, and provide for additional requirements.

(3) Where the department of agriculture finds that such rules and regulations are necessary to carry out the purposes and intent of this act, such rules and regulations may relate to the time, place, manner, and method of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time and shall encompass all reasonable factors which the department of agriculture deems necessary to prevent damage or injury to:

- (a) Persons, animals, or pollinating insects from the effect of drift or careless application.
- (b) The environment.
- (c) Plants, including forage plants.
- (d) Wildlife.
- (e) Fish and other aquatic life.

In issuing such regulations, the department of agriculture shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) Emergency power. In the event that the department of agriculture finds that an emergency exists which requires immediate action with regard to the registration, use or application of pesticides, the commissioner may, without notice or hearing, issue necessary orders, rules or regulations to protect the public health, welfare and safety. An order, rule or regulation issued under this provision shall be effective for a period no longer than sixty (60) days after it is issued. If the department of agriculture determines that the emergency order, rule or regulation should remain in effect, a public hearing under section 23 [27-235] shall be held within the sixty (60) day period to determine whether or not the order, rule or regulation should be adopted by the department of agriculture.

(5) All rules, regulations, and orders issued by the department of agriculture shall be in writing, shall be entered in full in books to be kept by the department of agriculture for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department of agriculture shall include and be based upon written findings of fact. A copy of any rule, regulation, or order certified by the department of agriculture or its secretary shall be received in evidence in all courts of this state with the same effect as the original.

History: En. Sec. 22, Ch. 403, L. 1971.

27-235. Hearings. (1) Public hearings. Except as provided in section 22 [27-234], no rule or regulation shall be made by the department of agriculture without a public hearing upon at least twenty-one (21) days notice. The public hearing shall be held at such time and place as may be prescribed by the department of agriculture, and any interested person shall be entitled to be heard.

(a) Notice of public hearing on the adoption of rules or regulations shall be made by the department of agriculture as follows:

(i) Informal notice of the hearing will be sent to all registrants of pesticides, to all licensed pesticide applicators, including farm applicators with restricted use permits, and to all licensed pesticide dealers or retailers, provided that the notice shall be sent only to the respective group or groups directly affected by the rules and regulations. Farm applicators of nonrestricted pesticides will be given informal notice through farm groups, organizations or associations and by means of farm publications.

(ii) In all cases of public hearings for adoption of rules and regulations, notice thereof shall be published in five (5) newspapers of general

circulation in the state once a week for two (2) successive weeks and the department of agriculture shall issue appropriate press releases.

(iii) Notices and publications shall be issued in the name of the state of Montana, shall be signed by the commissioner of the department of agriculture, shall specify the style and number of the proceedings, and the time and place of the hearing, and shall briefly state the purpose of the proceeding and method of procedure.

(iv) Proof of service by publication shall be made by the affidavit of the printer or publisher of the newspaper. Proof of service by mailing shall be made by the affidavit of the commissioner of the department of agriculture.

(2) Complaints. In all cases where a complaint has been made by the department of agriculture or its authorized agents or by any person that any provision of this act or any rule, regulation, or order of the department of agriculture is being or has been violated, notice of the hearing to be held on such complaint shall be given to the interested persons by one of the following methods:

(a) Personal service or service by publication in the manner as is now or shall hereafter be provided by law for the service of process in the civil action in the courts of this state; or

(b) By certified or registered United States mail with first-class postage prepaid thereon and addressed to the last known mailing address of the person or persons affected.

(c) Proof of personal service shall be made by affidavit by the officer or person authorized by law to serve process or by any agent of the department of agriculture in the manner as is now or may hereafter be provided by law for the service of process in a civil action in the district courts of this state.

(3) Except as otherwise in this act provided, the department of agriculture may act upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the department of agriculture, the department of agriculture shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The department of agriculture shall enter its order and findings on complaints and petitions within thirty (30) days after the hearing. In the case of any hearing held by the department of agriculture, the persons affected or the persons testifying may be represented by legal counsel.

History: En. Sec. 23, Ch. 403, L. 1971.

27-236. Administrative appeals. Persons adversely affected by a decision or proposed decision by the department of agriculture may request a hearing before the commissioner to show cause for the action or proposed action of the department of agriculture. (1) The application for a hearing shall be acted upon within ten (10) days after its filing, and if granted, the hearing shall be held without undue delay.

History: En. Sec. 24, Ch. 403, L. 1971.

27-237. Judicial review. Any person adversely affected by the rules, regulations, or orders of the department of agriculture may obtain judicial

review thereof by filing in the district court within thirty (30) days after entry of such order, a petition praying that the rule, regulation, or order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the department of agriculture, and thereupon the department of agriculture shall file in court the record of the proceeding on which it based the order. The court shall have jurisdiction to affirm or set aside the order complained of in whole or in part. The finding of the department of agriculture with respect to question of fact shall be sustained if supported by substantial evidence when considered on the record as a whole. Upon application, the court may remand the matter to the department of agriculture to take further testimony if there are reasonable grounds for the failure to produce the evidence in the prior hearing. The department of agriculture may modify its finding and its order by reason of the additional record and must file any modification of the findings or order with the clerk of the court.

History: En. Sec. 25, Ch. 403, L. 1971.

27-238. Subpoena power of department of agriculture. (1) The department of agriculture shall have the power to subpoena witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Subpoenaed witnesses shall be paid the same per diem and mileage as is authorized by the law for state employees.

(2) In case of failure or refusal on the part of any person to comply with the subpoena issued by the department of agriculture or in case of the refusal of any witness to testify as to any material matter regarding which he may be interrogated, any district court in the state, upon good cause shown by the application of the department of agriculture, may issue a warrant of attachment for such person and if after hearing the court finds his failure or refusal to be unjustified, compel him to comply with such subpoena, and to attend before the department of agriculture and produce any subpoenaed records, books, and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

History: En. Sec. 26, Ch. 403, L. 1971.

27-239. Public information. The department of agriculture as it deems proper may alone or in co-operation with other state or federal agencies publish information regarding aspects of the use and application sections or registration sections of this act. This information cannot disclose operations of selling, production, or use of pesticides by any person.

History: En. Sec. 27, Ch. 403, L. 1971.

27-240. Advisory committee. (1) The commissioner of the state department of agriculture may appoint advisory committees to study and make recommendations on special pesticide problems in the state. The advisory committee shall consist of individuals representing, equally, controlled industry, agriculture, health and wildlife. Governmental per-

sonnel, university personnel not included, shall not be represented on the advisory committee. Governmental personnel shall meet with the committee in an advisory capacity when requested by the committee. The advisory committee shall not exceed twelve (12) members. The commissioner of the department of agriculture shall establish the time period in which the advisory committee shall hold meetings. The time period shall not exceed two (2) years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the advisory committee.

(2) Each member of the advisory committee shall receive as compensation for his services the sum of twenty-five dollars (\$25) per day for each day actually expended in the performance of his duties and shall be reimbursed for actual per diem and necessary traveling expenses as provided by state law.

(3) The advisory committee may request that the department of agriculture hold a public hearing as outlined in section 23 [27-235], to assist it in gathering factual data and information on the special problem(s) assigned it.

History: En. Sec. 28, Ch. 403, L. 1971.

27-241. Educational programs. The department of agriculture in co-operation with other state and federal agencies shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing, handling, and transporting pesticides.

History: En. Sec. 29, Ch. 403, L. 1971.

27-242. Co-operation with other agencies. The department of agriculture may co-operate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this act and for securing uniformity of regulations.

History: En. Sec. 30, Ch. 403, L. 1971.

27-243. Enforcement. In enforcing this act, the department of agriculture or its duly authorized agents upon reasonable cause shall have the authority to enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable time: (1) Equipment subject to this act;

(2) Actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property; or

(3) Records on the selling or use of pesticides and the person's stock of pesticides.

History: En. Sec. 31, Ch. 403, L. 1971.

27-244. Discarding pesticides. It shall be unlawful for any person to discard any pesticide or pesticide container in such a manner as to

cause injury to humans, domestic animals, wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment.

History: En. Sec. 32, Ch. 403, L. 1971.

27-245. Violation. (1) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who may misrepresent, impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department of agriculture or its duly authorized agent in performance of its duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor.

(2) The department of agriculture or its authorized representative is hereby authorized to apply to the district court of the county or any county wherein a violation has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act notwithstanding the existence of other remedies of law. The injunction is to be issued without bond.

(3) Nothing in this act is to be construed as requiring the department of agriculture or its authorized agent to report for prosecution or for the institution of seizure proceedings minor violations of the act when it believes the public interest will be best served by other remedial action or by a suitable notice of warning in writing; nor is any part of this act to be construed to apply to common carriers transporting shipments tendered to them by the general public.

(4) Notwithstanding any other provisions of this section, if any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 5 [27-217] of this act, he shall, upon conviction, be fined not more than five hundred dollars (\$500) or imprisoned for not more than one (1) year or both.

(5) In all prosecutions under the registration section involving the composition of a lot of pesticide, a certified copy of the official analysis signed by the department of agriculture's authorized chemist shall be accepted as prima facie evidence of the composition.

History: En. Sec. 34, Ch. 403, L. 1971.

Separability Clause

Section 33 of Ch. 403, Laws 1971 read "Separability. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, by the court of competent jurisdiction, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby."

Repealing Clause

Section 35 of Ch. 403, Laws 1971 read "Sections 27-201, 27-202, 27-203, 27-204, 27-205, 27-206, 27-207, 27-208, 27-209, 27-210, 27-211 and 27-212, R. C. M., 1947, are repealed."

Effective Date

Section 36 of Ch. 403, Laws 1971 read "The registration and licensing provisions of this act shall be effective January 1, 1972."

CHAPTER 3—STATE BOARD OF FOOD DISTRIBUTORS—REGULATION OF FOOD STORES AND FOODSTUFFS

Section

27-306. Powers and duties of the state board of food distributors.

27-302. Board of food distributors.**Cross-References**

Board renamed and continued in de-

partment of business regulation, sec. 82A-404.

27-303. Appointment and term of members.**Cross-References**

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

27-306. Powers and duties of the state board of food distributors. (a) and (b). * * * [Same as parent volume.]

(c) To report as provided in section 2 [82-4002] of this act.

(d) to (f). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 49, L. 1939; amd. Sec. 10, Ch. 93, L. 1969.

proceedings annually to the governor with such information and recommendations as it deem proper, giving the names of all food stores licensed during the year and the items of the receipts and disbursements" in subsection (c).

Amendments

The 1969 amendment substituted "as provided in section 2 of this act" for "its

27-312. Quality of food sold—adulteration, etc.**Compiler's Notes**

Sections 27-101 to 27-105, 27-108 to 27-120, contained in chapter 1, Title 27 referred to in subsection (c) of this section, have been repealed. Sections 27-101 to 27-105, 27-108 to 27-110, 27-112, 27-113, 27-

115 to 27-120 were repealed by Sec. 27, Ch. 307, Laws 1967. Section 27-111 was repealed by Sec. 12, Ch. 122, Laws 1965 and section 27-114 was repealed by Sec. 5, Ch. 119, Laws 1955.

CHAPTER 4—SUPERVISION OF MILK INDUSTRY— STATE MILK CONTROL BOARD

Section

27-403. Definitions.

27-406. Markets.

27-407. Establishment of minimum prices.

27-408. Licenses to producers, producer-distributors, distributors and jobbers.

27-409. Licenses—disposition of income.

27-410. Application for licenses.

27-411. Declining, suspending and revoking licenses—penalties in lieu of suspension or revocation.

27-414.1. Limitation on extension of credit to retailers.

27-414.2. Financing prohibitions—producer and retailer.

27-403. Definitions. As used in this act, unless the context otherwise requires, "board" means the state agency created by this act, to be known as the Montana milk control board.

"Person" means any person, firm, corporation or co-operative association.

"Producer" means any person who produces milk for consumption within the state, selling same to a distributor.

"Distributor" means any person purchasing milk from any source, either in bulk or in packages, and distributing same for consumption within the state. Said term includes what are commonly known as jobbers and independent contractors. Said term, however, excludes all per-

sons purchasing milk from a dealer licensed under this act, for resale over the counter at retail, or for consumption on the premises.

"Producer-distributor" means any person both producing and distributing milk for consumption within the state.

"Retailer" means any person selling milk in bulk or in packages over the counter at retail, or for consumption on the premises, and includes, but is not limited to, retail stores of all types, restaurants, boarding-houses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

"Dealer" means any producer, distributor, producer-distributor, jobber or independent contractor.

"Licensee" means any person who holds a license from the board.

"Association" means any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the board.

"Market" means any area of the state designated by the board as a natural marketing area.

"Consumer" means any person or any agency, other than a dealer, who purchases milk for consumption or use.

"Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

"Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

"Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

"Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail, or for consumption on the premises.

"Milk" means the lacteal secretion of a dairy animal or animals, including such secretions when raw and when cooled, pasteurized, standardized, or homogenized, recombined, concentrated fresh or otherwise processed and all of which is designated as grade A by a duly constituted health authority, and also includes such secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

Class I milk shall include all bottled or packaged milk, low fat, butter-milk, chocolate milk, whipping cream, commercial cream, half and half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this act, whether raw, pasteurized, homogenized, sterile or aseptic.

Class II milk shall include milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

Class III milk shall include milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

The board shall have power and authority to assign milk products hereafter developed to the class which in its discretion it determines to be proper.

History: En. Sec. 3, Ch. 204, L. 1939; amd. Sec. 1, Ch. 192, L. 1959; amd. Sec. 3, Ch. 4, L. 1967; amd. Sec. 1, Ch. 107, L. 1971.

Amendments

The 1971 amendment deleted "at whole-sale" before "to a distributor" in the definition of "producer"; inserted "from any source, either in bulk or in packages" in the first sentence of the definition of "distributor"; inserted the second sentence in the definition of "distributor"; inserted the definition of "retailer"; added "jobber or independent contractor" at the end of

the definition of "dealer"; inserted the definition of producer prices after consumer; inserted the definitions of "wholesale prices," "jobber prices" and "retail prices"; added "and also includes such secretions * * * or any other state or nation" at the end of the definition of "milk"; deleted "raw, pasteurized and homogenized" near the beginning of the definition of "Class I milk"; added "whether raw, pasteurized, homogenized, sterile or aseptic" at the end of the definition of "Class I milk"; and made minor changes in phraseology and punctuation.

27-404. Milk control board.

Cross-References

Board continued in department of business regulation, sec. 82A-406.

Bonds of state officers and employees, sec. 6-105 et seq.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

27-405. General powers of the milk control board.

Cross-References

Functions transferred to department of business regulation, sec. 82A-403(2).

27-406. Markets. Pursuant to the declaration of policy relating to milk set forth in section 27-401, the milk control board is vested with the duty and authority to designate natural marketing areas which shall together embrace all the geographical area of the state and to prescribe and enforce minimum producer, wholesale, and retail prices in such areas in the manner set forth in this act.

(a) and (b) * * * [Same as parent volume.]

(c) All previously established marketing areas and all price schedules, rules and regulations issued and promulgated by the milk control board in this state at the time of passage of this act which are in force and effect, are hereby declared to be and remain in force and effect until altered or rescinded in the manner provided by this act.

(d) * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 204, L. 1939; amd. Sec. 4, Ch. 192, L. 1959; amd. Sec. 2, Ch. 107, L. 1971.

Amendments

The 1971 amendment deleted from the end of the preliminary paragraph a

proviso reading "provided, that at all times there shall not be less than five (5) natural marketing areas in the state"; substituted "the" for "any previously existing" before "milk control board" in subdivision (c); and made a minor change in phraseology.

27-407. Establishment of minimum prices. The board is hereby authorized and directed to fix minimum producer, wholesale, jobber, and retail prices for class I milk, and minimum producer prices only for class II and class III milk in all areas of the state.

The board shall establish such prices by means of flexible formulas which it shall adopt by official order and which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production costs and supply, processing and distribution costs, and retailing costs.

Prior to promulgation of such formulas the board shall conduct a public hearing and admit evidence under oath relative to the matters of its inquiry, at which hearing the consuming public shall be entitled to offer evidence and be heard the same as persons engaged in the milk industry. The board shall by means of such hearing or from facts within its own knowledge, investigate and determine what are reasonable costs and charges for producing, hauling, handling, processing, and/or other services performed in respect to milk and what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be most in the public interest.

The board shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states, so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

The board shall, at least thirty (30) days prior to the date set for any public hearing on establishment or revision of milk pricing formulas, cause notice to be given to the consuming public and the milk industry of the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing, so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

Such specific factors may include, but shall not be limited to, the following items:

- (1) Current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

- (2) The ability and willingness of consumers to purchase, which shall include among other things, per capita disposable income statistics, consumer price indices, and wholesale price indices;

- (3) The cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States Department of Agriculture), prices paid by farmers for dairy feed in particular and farm wage rates in this state;

- (4) The alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things, prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(5) The prices of butter-nonfat dry milk, and cheese;

(6) The cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(7) The cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk and prevailing wage rates in the state;

(8) The need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(9) A reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it at a public hearing by the consuming public or the milk industry, the board shall, at least thirty (30) days prior to the date set for any public hearing on establishment or revision of milk pricing formulas, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

The board, after consideration of the evidence produced at such hearing, shall make written findings and conclusions and shall fix by official order:

(a) The formula whereby minimum producer prices for milk in classes I, II, and III shall be computed.

(b) The formula whereby minimum wholesale prices for milk in class I shall be computed.

(c) The formula whereby minimum jobber prices for milk in class I shall be computed.

(d) The formula whereby minimum retail prices for milk in class I shall be computed.

This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in (a), (b), (c), and (d) above. If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

Each order establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades or uses as the board may deem advisable and shall specify the minimum prices therefor.

The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest.

All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

The board may, upon its own motion, or upon application in writing from any market, or from any party at interest, alter, revise or amend any official order theretofore made by the board provided that before making, revising, or amending any order establishing or revising milk pricing formulas, the board shall hold a public hearing on such matter in the same manner provided herein for the original establishment of milk pricing formulas; provided, further, the board may in its discretion, when it determines the need exists, notice and hold state-wide public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

Upon petition by any producer, producer-distributor or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an area-wide or state-wide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing practices which have historically prevailed in the area concerned or state-wide, as the case may be; and if the board finds that the evidence adduced at such hearing warrants the establishment of such an area-wide or state-wide pooling arrangement, the board shall proceed by official order to establish the same, but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or area-wide or state-wide pooling arrangements, or abandonment thereof.

History: En. Sec. 7, ch. 204, L. 1939; amd. Sec. 5, Ch. 192, L. 1959; amd. Sec. 5, Ch. 4, L. 1967; amd. Sec. 3, Ch. 107, L. 1971.

Amendments

The 1971 amendment inserted the first two paragraphs; deleted "Orders fixing minimum prices for class I milk" from the beginning of the present third paragraph; substituted "promulgation of such formulas" for "the fixing of prices for class I milk in any market" in the first sentence of the third paragraph; inserted "jobbers, retailers" near the end of the fifth paragraph; substituted "thirty (30)" for "ten (10)" near the beginning of the sixth paragraph; substituted "establishment or revision of milk pricing formulas" for "minimum prices" near the beginning of the sixth paragraph; inserted "in establishing the formulas and in particular" near the middle part of the sixth paragraph; inserted the numbered subdivisions and the sentence preceding them; substituted "establishing or revising any milk pricing formulas" for "fixing minimum prices on class I milk" near the beginning of the first paragraph following the numbered subdivisions; substituted "thirty (30)" for "ten (10)" in the first paragraph following the numbered subdivisions; substituted "establishment or revision of milk pricing formulas" for "minimum prices" near the middle part of the first paragraph following the numbered subdivisions; inserted the lettered subdivisions and the

first paragraph following them; deleted a sentence reading "The minimum prices to be paid by the milk dealers to producers and others for milk" from the beginning of the present second paragraph following the lettered subdivisions; substituted "establishing or revising any milk pricing formulas" for "fixing minimum prices" near the beginning of the second paragraph following the lettered subdivisions; deleted former paragraphs (b) and (c) and another paragraph after the present fifth paragraph following the lettered subdivisions; substituted "establishing or revising milk pricing formulas" for "fixing prices to be charged or paid for class I milk in any of its forms, classes, grades or uses" near the beginning of the first proviso of the sixth paragraph following the lettered subdivisions; substituted "establishment of milk pricing formulas" for "fixing of prices" at the end of the first proviso of the sixth paragraph following the lettered subdivisions; substituted "establishment or revision of milk pricing formulas" for "minimum prices for class I milk" in the second proviso of the sixth paragraph following the lettered subdivisions; added the last three paragraphs; deleted former subsection (2), for text of which see parent volume; and made minor changes in style, phraseology and punctuation.

Cross-References

Functions continued in board, sec. 82A-406(3).

27-408. Licenses to producers, producer-distributors, distributors and jobbers. In any market, where the provisions of this act apply, it shall be unlawful for any producer, producer-distributor, distributor or jobber to produce, transport, process, store, handle, distribute, buy or sell milk unless such dealer be duly licensed as provided by this act. It shall be unlawful for any such person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this act. The board may decline to grant a license, or may suspend or revoke a license already granted, upon due cause and after hearings.

History: En. Sec. 8, Ch. 204, L. 1939; amd. Sec. 4, Ch. 107, L. 1971.

Amendments

The 1971 amendment inserted "or jobber" in the first sentence.

27-409. Licenses—disposition of income. No producer, producer-distributor, distributor or jobber shall engage in the business of producing or selling milk subject to this act in this state without first having obtained a license from the Montana livestock sanitary board or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug and Cosmetic Act, and without being licensed under this act by the

milk control board. The annual fee for such license from the milk control board shall be two dollars (\$2), shall be due and payable on or before the first day of July, and shall be deposited by said board to the credit of the general fund.

In addition to said annual license fee, the board shall, in each year, on or before the first day of April, for the purpose of securing funds to administer and enforce this act, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) to (c) * * * [Same as parent volume.]

Said assessment upon producer-distributors, producers, and distributors shall be paid quarterly on or before the fifteenth [15th] day of July, October, January and April of each year, and the amount of such assessment shall be computed by applying the fee designated by the board to the volume of milk sold in the calendar quarter immediately preceding.

Failure of any producer, producer-distributor, or distributor to pay said assessment when due shall constitute violation of this act and his license under this act shall thereupon automatically terminate and be null and void and of no effect. Reinstatement of a license so terminated shall be affected by payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

All assessments hereinbefore required to be paid shall be deposited by the milk control board in the earmarked revenue fund; and all costs of administering this act, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this act, shall be paid out of milk control board moneys in such fund.

The rates of assessment above provided are maximum rates, and the board may, if it finds the costs of administering and enforcing this act can be derived from lower rates, fix the rates at a less amount on or before the first day of April in any year.

History: En. Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959; amd. Sec. 157, Ch. 147, L. 1963; amd. Sec. 5, Ch. 107, L. 1971.

Amendments

The 1971 amendment inserted "or jobber" near the beginning of the first sentence of the first paragraph; inserted "or, in the case of milk entering this state

* * * Drug and Cosmetic Act" in the latter part of the first sentence of the first paragraph; deleted "commencing in the year 1959" after "first day of July" in the second sentence of the first paragraph; and deleted "commencing in July of 1959" after "April of each year" from the first paragraph following the lettered subdivisions.

27-410. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared under authority of the board, and an applicant shall state such facts concerning his circumstances and the nature of the business to be conducted as in the opinion of the board are necessary for the administration of this act. Such application shall certify the applicant to be the holder of all licenses required by the Montana livestock sanitary board for the conduct of his business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug and Cos-

metic Act, and such application shall be accompanied by the license fee required to be paid.

History: En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959; amd. Sec. 6, Ch. 107, L. 1971.

Amendments

The 1971 amendment inserted "or job-

ber" near the beginning of the first sentence; and inserted "or, in the case of milk entering this state * * * Drug and Cosmetic Act" in the second sentence.

27-411. Declining, suspending and revoking licenses—penalties in lieu of suspension or revocation. (1) The board may decline to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this act or of any lawful order or regulation of the board, the failure or refusal to make required statements or reports, and aggravated delinquency in the payment of license or assessment fees, or any of them, shall be deemed causes for which the board may, at its discretion, suspend or revoke a license, provided that no license shall be fully revoked except upon the approval of a majority of all members of the board.

(2) In lieu of a suspension or revocation of a license the board may assess a civil penalty not to exceed five hundred dollars (\$500) per day for each daily failure to comply with or each daily violation of the provisions of this act or of any lawful order or regulation of the board; and if the person against whom such civil penalty is assessed fails or refuses to pay such civil penalty forthwith, the board is empowered and directed to collect such civil penalty by a civil proceeding in the district court of the first judicial district. Such civil penalties shall be construed as civil and not criminal in nature. Any moneys received by the board as a result of collection of civil penalties shall be paid into the state general fund.

History: En. Sec. 11, Ch. 204, L. 1939; amd. Sec. 7, Ch. 107, L. 1971.

Amendments

The 1971 amendment designated the former provisions as subsection (1); in-

serted "or assessment" after "in the payment of license" in the second sentence of subsection (1); added subsection (2); and made minor changes in style and punctuation.

27-414.1. Limitation on extension of credit to retailers. No sale or delivery shall be made by any producer-distributor, distributor or jobber to any retailer, except for cash or payment within fifteen (15) days after regular billings, and all producer-distributors, distributors and jobbers shall bill retailers at least monthly. In no event shall any producer-distributor, distributor, or jobber extend more than fifteen (15) days' credit after billing to a retailer, nor shall any retailer accept or receive delivery of such milk without agreement to pay in cash therefor within fifteen (15) days after regular billing therefor. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of producer-distributors, distributors, or jobbers involved in violation hereof shall be suspended or revoked as determined by the board in its discretion.

History: En. Sec. 8, Ch. 107, L. 1971.

Title of Act

An act to amend and add new sections to the Montana Milk Control Law; amending section 27-403, R. C. M. 1947, relating to definitions, by adding definitions thereto; amending section 27-406, R. C. M. 1947, relating to markets, by removing the requirement there be at least five (5) natural marketing areas in the state; amending section 27-407, relating to minimum prices, to provide for flexible price formulas and to specify how base plans may be established and under what circumstances area-wide or state-wide pooling arrangements may be adopted; amending sections 27-408, 27-409, and 27-410, re-

lating to licensing, to include jobbers and imported milk within the jurisdiction of the milk control board; amending section 27-411, R. C. M. 1947, to provide that civil penalties may be assessed by the milk control board in lieu of suspension or revocation of license; repealing section 27-427, R. C. M. 1947, relating to local advisory boards; adding new sections to provide a time limitation on credit which may be extended to retailers and to prohibit financing of producers and retailers by distributors; providing for severability if any part of this act is determined unconstitutional; and repealing all acts and parts of acts in conflict herewith.

27-414.2. Financing prohibitions—producer and retailer. No producer, producer-distributor, distributor, or jobber licensed under this act shall hereafter advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of any retailer, and no producer, producer-distributor, distributor, or jobber shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer; and no producer-distributor, distributor, or jobber licensed under this act shall hereafter advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of any producer, and no producer-distributor, distributor, or jobber shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer; provided, however this section shall not be construed so as to prohibit any producer from belonging to, participating in, or patronizing a co-operative corporation or a producer, producer-distributor, distributor, or jobber from operating his own wholly-owned dairy products or other retail store or home-delivery retail routes.

This section is not to be construed to prohibit a producer from requesting and a distributor from granting an advance payment for milk prior to the regular date of payment therefor or to limit in any way the right of a producer to assign part or all of moneys which are or may become due to him from a distributor.

History: En. Sec. 9, Ch. 107, L. 1971.

Repealing Clause

Section 10 of Ch. 107, Laws 1971 read "Section 27-427, R.C.M. 1947, is repealed."

Separability Clause

Section 11 of Ch. 107, Laws 1971 read "If any section, subdivision, sentence or word of this act shall be determined by

a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

Repealing Clause

Section 12 of Ch. 107, Laws 1971 repealed all acts and parts of acts in conflict therewith.

27-426. Bonds required of distributors—amounts, etc.

Accrual of Cause of Action

Three-year statute of limitations pro-

vided under section 93-2607 did not bar action on milk distributors bond where

distributor had pursued administrative and court proceedings in intervening three-year period and surety had knowledge of earlier proceedings since cause of action did not accrue until plaintiff had right of action

and plaintiff had no right of action until administrative remedies had been exhausted. *Montana Milk Control Board v. Hartford Accident & Indemnity Co.*, 153 M 299, 456 P 2d 302.

27-427. Repealed.

Repeal

Section 27-427 (Sec. 11, Ch. 192, L. 1959), relating to local advisory boards,

was repealed by Sec. 10, Ch. 107, Laws 1971, and by Sec. 2, Ch. 272, Laws 1971.

CHAPTER 5—OLEOMARGARINE

27-507. Sanitary control of oleomargarine products.

Cross-References

Commissioner's functions transferred to department of livestock, sec. 82A-1302.

CHAPTER 6—FOOD SERVICE ESTABLISHMENTS, MARKETS AND MANUFACTURERS

Section

27-612. Definition of terms.

27-612. Definition of terms. As used in this act, unless the context clearly indicates otherwise:

(1) to (5) * * * [Same as parent volume.]

(6) "Person" means a person, partnership, corporation, association, co-operative group, or other entity engaged in operating, owning, or offering services of an establishment as included in this section.

(7) "Establishment" means a food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor or perishable food dealer.

(8) to (10) * * * [Same as parent volume.]

(11) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

History: En. Sec. 2, Ch. 17, L. 1967; amd. Sec. 1, Ch. 130, L. 1971.

at the end of subdivision (6) for "a food manufacturing establishment, meat market, food service establishment, or frozen food plant"; added "or perishable food dealer" at the end of subdivision (7); and added subdivision (11).

Amendments

The 1971 amendment substituted "an establishment as included in this section"

CHAPTER 7—FOOD, DRUG AND COSMETIC ACT

Section

27-702. Definition of terms.

27-703. Prohibited acts enumerated.

27-721. Procedure for adopting, amending or repealing regulations—hearings.

27-702. Definition of terms. For the purpose of this act—

(a) to (s) * * * [Same as parent volume.]

(t) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the char-

acteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(1) to (4) * * * [Same as parent volume.]

(u) (Color and color additive)

(1) to (3) * * * [Same as parent volume.]

(v) * * * [Same as parent volume.]

(w) The term "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.

(x) The term "consumer commodity," except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this act or by the Federal Act and regulations pursuant thereto. Such term does not include—

(1) any tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum Toxin Act;

(3) any drug subject to the provisions of section 17 (a) (B) or 16 (k) of this act, or section 503 (b) (1) or 506 of the Federal Act;

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551-1610).

(y) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(z) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufac-

turers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

History: En. Sec. 2, Ch. 307, L. 1967;
amd. Sec. 1, Ch. 171, L. 1971.

Amendments

The 1971 amendment added subdivisions (w), (x), (y) and (z), and made minor changes in punctuation and style.

27-703. Prohibited acts enumerated. The following acts and the causing thereof within the state of Montana are hereby prohibited:

(a) to (f) * * * [Same as parent volume.]

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same affect (effect) signed by, and containing the name and address of the person residing in the state of Montana from whom he received in good faith the food, drug, device or cosmetic.

(h) to (l) * * * [Same as parent volume.]

(m) (Counterfeiting trade-marks)

(1) to (3) * * * [Same as parent volume.]

(n) to (o) * * * [Same as parent volume.]

(p) The distribution in commerce of a consumer commodity, as defined in this act, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this act and of regulations promulgated under authority of this act; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons

(1) are engaged in the packaging or labeling of such commodities, or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(q) The labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this act.

History: En. Sec. 3, Ch. 307, L. 1967;
amd. Sec. 2, Ch. 171, L. 1971.

Amendments

The 1971 amendment added subdivisions (p) and (q) and made minor changes in punctuation and style.

27-721. Procedure for adopting, amending or repealing regulations—hearings. (a) The authority to promulgate regulations for the efficient enforcement of this act is hereby vested in the state board. The state board is hereby authorized to adopt by reference the regulations promulgated by the Food and Drug Administration under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(b) * * * [Same as parent volume.]

(c) Before promulgating any regulations contemplated by section 27-709; 27-711 (j); 27-712; 27-715 (d), (f), (g), (h), (m), and (p); 27-

716 (c) or 27-720 (b), the state board shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the state board (which date shall not be prior to ten (10) days after its promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation the state board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing or effective date. No hearing will be required for promulgation by reference of those regulations promulgated under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

History: En. Sec. 21, Ch. 307, L. 1967; to the Fair Packaging and Labeling Act
amd. Sec. 3, Ch. 171, L. 1971. at the end of subsection (a) and at the
end of subsection (c).

Amendments

The 1971 amendment added references

27-724, 27-725. Repealed.

Repeal

Sections 27-724 and 27-725 (Secs. 24, 25, Ch. 307, L. 1967), relating to the un-

lawful possession of hallucinogenic drugs and providing penalties therefor, were repealed by Sec. 14, Ch. 314, Laws 1969.

CHAPTER 8—FLOUR AND BREAD

Section

27-801. Definitions.

27-802. Vitamin and mineral content requirements for flour—exceptions.

27-803. Vitamin and mineral content requirements for bread.

27-804. Enforcement—modification of requirements.

27-805. Penalties for violations.

27-801. Definitions. When used in this act, unless the context otherwise requires: (1) "Flour" includes and shall be limited to the foods commonly known in the milling and baking industries as:

(a) white flour, also known as wheat flour or plain flour;

(b) bromated flour;

(c) self-rising flour, also known as self-rising white flour or self-rising wheat flour, and

(d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excludes whole wheat flour and also excludes special flours not used for bread, roll, bun or biscuit baking, such as specialty cake and pancake flours.

(2) "White bread" means any bread made with flour as defined in (1) above whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including vienna bread, french bread, and italian bread.

(3) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dogs rolls, parker house rolls; and hard rolls, such as vienna rolls, kaiser rolls, yeast-raised sweet rolls or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(4) "Executive officer" means the executive officer of the health department of the state of Montana.

(5) "Board" means the board of health of the state of Montana.

(6) "Department" means the department of health of the state of Montana.

(7) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread or rolls.

History: En. Sec. 1, Ch. 274, L. 1971.

Compiler's Notes

The preamble to the act states "WHEREAS, there exists in the diets in this country a widespread deficiency of certain food ingredients essential to the health and well-being of the people, it is necessary and advisable to protect so far as may be possible to the health of the people of this state against such deficiency by providing for the enrichment of certain kinds of flour and bread, to increase

the content of such essential ingredients, normally present in wheat. In the accomplishment of such purposes, it is necessary and advisable to promote uniformity in the laws applicable to interstate and to intrastate shipments of such foods."

Title of Act

An act to require the enrichment of flour and bread to meet certain standards of vitamin and mineral content; and to fix penalties for violation of this act.

27-802. Vitamin and mineral content requirements for flour—exceptions. It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, flour unless the following vitamins and minerals are contained in each pound of such flour: not less than 2.0 milligrams and not more than 2.5 milligrams of thiamine; not less than 1.2 milligrams and not more than 1.5 milligrams of riboflavin; not less than 16.0 milligrams and not more than 20.0 milligrams of niacin or niacin-amide; not less than 13.0 milligrams and not more than 16.5 milligrams of assimilable iron (Fe); except in the case of self-rising flour which in addition to the above ingredients shall contain not less than 500 milligrams and not more than 1500 milligrams of assimilable calcium (Ca); provided, however, that the terms of this section shall not apply to flour sold to distributors, bakers or other processors, if the purchaser furnishes to the seller a certificate in such form as the board shall by regulation prescribe, certifying that such flour will be (1) resold to a distributor, baker or other processor, or

(2) used in the manufacture, mixing or compounding of flour, white bread or rolls enriched to meet the requirements of this act, or

(3) used in the manufacture of products other than flour, white bread or rolls. It shall be unlawful for any purchaser so furnishing a certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History: En. Sec. 2, Ch. 274, L. 1971.

27-803. Vitamin and mineral content requirements for bread. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls unless the following vitamins and minerals are contained in each pound of such bread or rolls: not less than 1.1 milligrams and not more than

1.8 milligrams of thiamine; not less than 0.7 milligrams and not more than 1.6 milligrams of riboflavin; not less than 10.0 milligrams and not more than 15.0 milligrams of niacin; not less than 8.0 milligrams and not more than 12.5 milligrams of assimilable iron (Fe). The requirements for vitamin and mineral content specified in sections 2 [27-802] and 3 [27-803] are identical with those of the federal standards.

History: En. Sec. 3, Ch. 274, L. 1971.

27-804. Enforcement—modification of requirements. (1) The board is hereby charged with the duty and authority to make, amend or rescind rules, regulations and orders for the efficient enforcement of this act.

(2) Whenever the vitamin and mineral requirements set forth in sections 2 [27-802] and 3 [27-803] of this act are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or rolls, the department in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of this act, is authorized and directed to modify or revise such requirements to conform with amended standards governing interstate shipments. The interstate standards referred to are those standards established under authority of the Federal Food, Drug, and Cosmetic Act of 1938, as amended. (Title 21 U.S.C. 301 et seq.).

(3) In the event of findings by the executive officer that there is an existing or imminent shortage of any ingredient required by sections 2 [27-802] or 3 [27-803] of this act, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this act, the executive officer shall **issue an order**, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls; and if he finds it necessary or appropriate, excepting such foods from labeling requirements until the further order of the executive officer. Any such findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such order of the appropriate federal agency or factual information supplied by it, the executive officer on his own motion may, and upon receiving the sworn statements of ten (10) or more persons subject to this act that they believe such a shortage exists or is imminent, shall, within twenty (20) days thereafter hold a public hearing with respect thereto at which any interested person may present evidence; and shall make findings based upon the evidence presented. The executive officer shall publish notice of any such hearing at least ten (10) days prior thereto. Whenever the executive officer has reasons to believe that such shortage no longer exists, he shall hold a public hearing, after at least ten (10) days notice shall have been given, at which any interested person may present evidence, and he shall make findings based upon the evidence so presented. If his findings be that such a shortage no longer exists, he shall issue an order to become effective not less than thirty (30) days after publication thereof revoking such previous order; provided, however, that undisposed flour stocks of

flour on hand at the effective date, of such revocation order, or flour manufactured prior to such effective date for sale in this state may thereafter be lawfully sold or disposed of.

(4) All orders, rules and regulations adopted by the board pursuant to this act shall be published in the manner hereinafter prescribed, and, within the limits specified by this act, shall become effective upon such date as the board shall fix.

(5) Whenever under this act publication of any notice, order, rule or regulation is required, such publication shall be made at least once in at least one (1) daily newspaper of general circulation printed and published in this state.

(6) For the purpose of this act, the department or its authorized agents may take samples for analysis, conduct examinations and investigations, and enter, at reasonable times, any factory, mill, bakery, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold or held, or any vehicle being used for the transportation thereof and inspect any such place or vehicle and any flour, white bread or rolls therein, and all pertinent equipment, materials, containers and labeling.

History: En. Sec. 4, Ch. 274, L. 1971.

27-805. Penalties for violations. Any person who violates any of the provisions of the act or the orders, rules or regulations promulgated by the board under authority thereof, shall upon conviction thereof be subjected to fine for each and every offense, in a sum not exceeding one hundred dollars (\$100) or to imprisonment not to exceed thirty (30) days.

History: En. Sec. 5, Ch. 274, L. 1971.

pealed all acts and parts of acts in conflict therewith.

Repealing Clause

Section 6 of Ch. 274, Laws 1971 re-

CHAPTER 9—DISPENSING OF DRUGS BY PRACTITIONERS

Section

27-901. Definitions.

27-902. Practices declared unlawful between drug companies and medical practitioners.

27-903. Dispensing of drugs by medical practitioners unlawful—exceptions.

27-904. Practices declared unlawful between medical practitioners and pharmacies.

27-905. Enforcement proceedings by county attorneys.

27-906. Existing ownership of pharmacy.

27-901. Definitions. As used in this act:

(a) The term "medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, chiroprody (podiatry), and in such practice to administer or prescribe drugs.

(b) The term "drug" means any article:

(1) Recognized in the official United States pharmacopeia, the official national formulary, or in any supplement to such pharmacopeia or formulary.

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man.

(3) Intended to affect the structure or any function of the body of man.

(4) Intended for use as a component of any article described in clause (1), (2) or (3) of this paragraph, but such term does not include any device or any components of a device.

(c) The term "device" means any instrument, apparatus, or contrivance intended:

(1) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man.

(2) To affect the structure or any function of the body of man.

(d) The term "pharmacy" means an office, pharmacy, drugstore, or other establishment which engages in the sale of drugs at retail.

(e) The term "community pharmacy," when used in relation to a medical practitioner, means a pharmacy situated within ten (10) miles of any place at which such medical practitioner maintains an office for professional practice.

(f) The term "drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs, but such term does not include a pharmacy.

(g) The term "person" means any individual, and any partnership, firm, corporation, association, or other business entity.

(h) The term "state" means the state of Montana or any political subdivision thereof.

History: En. Sec. 1, Ch. 311, L. 1971.

Title of Act

An act to regulate trade in drugs by prohibiting the dispensing of drugs by

medical practitioners and their participation in profits from the dispensing of such products, except under certain circumstances, and for other purposes.

27-902. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(a) For a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(b) For a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment, and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment.

(c) For a medical practitioner to solicit or to knowingly receive from a drug company, or for a drug company to pay or to promise to pay to a medical practitioner, any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the

volume of wholesale or retail sales at any place of drugs manufactured, processed, packaged, or distributed by the company.

History: En. Sec. 2, Ch. 311, L. 1971.

27-903. Dispensing of drugs by medical practitioners unlawful—exceptions. Except as otherwise provided by this section, it shall be unlawful for a medical practitioner to engage directly or indirectly in the dispensing of drugs. Nothing in this subsection shall prohibit:

(1) A medical practitioner from furnishing a patient any drug in an emergency.

(2) The administration of a unit dose of a drug to a patient by or under the supervision of such medical practitioner.

(3) Dispensing a drug to a patient by a medical practitioner where there is no community pharmacy available to the patient.

(4) The dispensing occasionally, but not as a usual course of doing business by a medical practitioner.

(5) A medical practitioner from dispensing drug samples.

History: En. Sec. 3, Ch. 311, L. 1971.

27-904. Practices declared unlawful between medical practitioners and pharmacies. (a) It shall be unlawful for a medical practitioner to own directly or indirectly a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under section 3 [27-903].

(b) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy, or for a community pharmacy knowingly to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: En. Sec. 4, Ch. 311, L. 1971.

27-905. Enforcement proceedings by county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceeding may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as may be possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971.

27-906. Existing ownership of pharmacy. The provisions of subsection (a) of section 4 [27-904 (a)] shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on the effective date of this act, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971.

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VOLUME 3

Part 1

1971 Cumulative Pocket Supplement

Containing

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LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
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AND

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NEW LAWS IN VOLUME 3 (Part 1)

For index see pocket supplement to Replacement Volume 9

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THE HISTORY OF THE UNITED STATES

OF AMERICA

1776-1876

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MONTANA REVISED CODES

TITLE 28—FORESTS AND FORESTRY

- Chapter 1. State board of forestry—forest conservation and fire protection, 28-103, 28-105, 28-109, 28-111, 28-119, 28-123 to 28-125.
3. Establishment of state forest and conservation experiment station, 28-304.
 4. Disposal of slashings and forest debris, 28-408, 28-410, 28-412.
 6. Protection and conservation of forest and farm resources by county commissioners, 28-603.
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CHAPTER 1—STATE BOARD OF FORESTRY—FOREST CONSERVATION AND FIRE PROTECTION

- Section 28-103. Definitions, as used in this chapter.
- 28-105. Powers of board.
- 28-109. Duty of owner of classified forest land.
- 28-111. Determination of costs of fire protection—certification—tax levy.
- 28-119. Sawdust piles—restrictions.
- 28-123. Disposition of moneys.
- 28-124. Disbursement of moneys.
- 28-125. Ex officio fire wardens—powers.

28-101. State board of forestry created—membership.

Cross-References

Board abolished and functions transferred, sec. 82A-1505(2).

28-103. Definitions, as used in this chapter. Forest land, for fire protection purposes, is defined as any land which has enough timber, standing or down; slash or brush, to constitute in the judgment of the board a fire menace to life or property, provided, that grassland and agricultural areas are included when such areas are intermingled with or contiguous to areas of forest land.

Lands for conservation purposes are defined as all forest lands within the state of Montana which are officially classified by the board as forest lands in accordance with 28-104 (b).

Forest fire is defined as a fire burning uncontrolled on forest lands.

Organized forest fire protection district is defined as a definite forest land area, the boundaries of which are fixed, and wherein, forest fire protection is provided through the medium of an agency recognized by the board.

Recognized agency is defined as an agency representing owners of forest lands in an organized forest fire protection district, organized for the purpose of providing forest fire protection in such district and recognized by the board as giving adequate fire protection to such forest lands in accordance with rules and regulations prescribed by the board. Any

public agency administering and protecting forest lands may also be recognized by the board as such an agency.

Forest fire season is defined as the period of each year beginning on May first and ending on September thirtieth, inclusive; provided, however, that in the event of excessive or great fire danger, this period may be expanded when in the judgment of the state forester dangerous fire conditions exist. When so expanded, the state forester shall give public notice.

Forest fire protection is defined as the work of prevention, detection and suppression of forest fires.

Protection zone is a broad area within which the forest fire protection costs are approximately the same. Protection zones will be designated by the state forester, with the approval of the board.

Conservation is defined as the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of the state of Montana.

Owner is defined as the person, firm, association or corporation having the actual, beneficial ownership of forest land, or timber, other than an easement, right of way, or mineral reservation.

History: En. Sec. 3, Ch. 128, L. 1939;
amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1,
Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L.
1971.

Amendments

The 1971 amendment inserted the present second paragraph defining lands for conservation purposes; and inserted the present ninth paragraph defining conservation.

28-105. Powers of board. To effectuate, accomplish and maintain the purposes of this act, the board is hereby authorized and empowered:

(a) To classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and to change or modify such classification from time to time as in its judgment shall be proper.

(b) To create organized forest fire protection districts; provided, however that before such district be created the board shall hold a hearing in any county in which such proposed district or a part thereof shall be included and shall give notice of such hearing at least twenty (20) days in advance thereof to all owners to be affected by such proposed district; service of such notice may be made by registered or certified mail or by publication in a newspaper published in the county in which such hearing is to be held, and if no newspaper is published in such county then in a newspaper having a general circulation therein; provided, further, that no forest fire protection district may be created unless approved in writing by vote of not less than fifty-one per cent (51%) of the owners representing at least fifty-one per cent (51%) of the acreage to be involved in such proposed forest fire protection district.

(c) To provide through the state forester for forest fire protection of any forest lands by the state forester's organization, or by contract or any other feasible means, in co-operation with any federal, state or other recognized agency or agencies.

(d) To make and enforce reasonable rules and regulations for the purpose of enforcing and accomplishing the provisions and purposes of

this act; provided, however, such rules and regulations shall not conflict with the powers of the state board of land commissioners.

(e) To co-operate with the government of the United States and any of its bureaus, services and agencies in accordance with federal statutes and regulations thereunder.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967.

Amendments

The 1963 amendment added the provisions to paragraph (b).

The 1967 amendment in subsection (b) decreased from 75% to 51% the number of property owners required to approve creation of the proposed district.

Effective Dates

Section 2 of Ch. 83, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 27, 1963.

Section 2 of Ch. 149, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

28-109. Duty of owner of classified forest land. Every owner of forest land classified as such by the board is hereby required to furnish protection against the starting or existence, and to suppress the spread, of fire on such land during the full period of each forest fire season defined by this act. Such protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection to be prescribed by the board. If such owner does not provide for such protection and suppression, said board may provide the same, at a cost to the landowner of not more than ten cents (10¢) per acre per year for Class I land and not more than three cents (3¢) per acre per year for Class II land and in the event thereof, the owner of such land shall pay to the county treasurer of the county in which such land is situated, the charge for the same approved by the board, in accordance with the provisions of this act. No other charges shall be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent.

The forest land of Montana shall be classified for protection and assessment purposes as follows:

(a) Class I Land. Shall include all forest land primarily suitable for production of timber, forest land primarily suitable for joint use for timber production and the grazing of livestock as a permanent or semipermanent joint use or as a temporary joint use during the interim between logging and reforestation.

(b) Class II Land. Shall include all lands primarily suitable for grazing or other agricultural purposes, which are intermingled with or contiguous to the land described in subsection (a), above.

(c) Class III Land. Shall include lands primarily suitable for grazing or other agricultural purposes including structures and improvements which are within the forest fire protection areas but not meeting the detailed definitions of lands described in subsection (b), above. These lands may only be listed for payment when requested by the landowner at rates determined by the state forester and shall be submitted to the county assessor for collection and disposition as provided in section 28-111.

History: En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959; amd. Sec. 1, Ch. 148, L. 1967.

Amendments

The 1967 amendment added subdivision (c) in the second paragraph.

Effective Date

Section 2 of Ch. 148, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

28-111. Determination of costs of fire protection—certification—tax levy. The state forester will prepare a fire protection plan, for the approval of the board in which fire protection costs for each classification within each protection zone is determined. The board will establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The state forester will request the legislature to appropriate the state's portion as approved by the board. After the appropriation is made by the legislature, the board will cause an assessment to be made on the owners of classified forest land, as specified in section 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

On or before the second Tuesday in August of each year, the secretary shall determine the names of all owners who shall have failed to provide the forest fire protection for their lands required by this act, together with the description of such lands and the acreage thereof, and calculate the total amount due to the board from each such owner for such forest fire protection which shall not exceed the maximum hereinbefore specified.

The secretary shall submit a statement of the foregoing to the board and upon approval thereof by the board, the secretary shall certify in writing to the county assessor of each county, the names of such owners of forest lands in his county, together with a description of such lands and a statement of the amount so found to be due and owing by each of such owners to the board for forest fire protection.

Upon receiving such certificate from the secretary showing the amount due, the county assessor shall extend the amounts so certified upon the county tax rolls covering such lands, and such sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums so collected shall be promptly transmitted to the state treasurer, who is hereby required to deposit the same in the agency fund to the credit of the state forester.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in the last sen-

tence in the fourth paragraph, substituted "the agency fund to the credit of the state forester" for "a special fund designated the foresters' co-operative work fund, as provided for in section 81-1410."

28-119. Sawdust piles—restrictions. Prior to each fire season, all persons, firms or corporations, creating or responsible for mill waste within the forest areas will treat, dispose of, remove or reduce the hazards created so that such accumulation of sawmilling waste does not constitute a fire hazard.

No sawmill located within or contiguous to forest lands shall accumulate in one pile, sawdust in excess of an amount resulting from the sawing of five hundred thousand (500,000) feet log scale of sawlogs, provided, however, that a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the state forester. In the event that burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with regulations issued by the board of forestry.

History: En. Sec. 19, Ch. 128, L. 1939; amd. Sec. 1, Ch. 222, L. 1955; amd. Sec. 1, Ch. 195, L. 1969.

Amendments

The 1969 amendment inserted the first paragraph and inserted "In the event that burning is the disposal method elected," in the last sentence of the second paragraph.

28-123. Disposition of moneys. The following funds may be expended as directed by the board for fire prevention, detection, suppression and forest, forest range, forest water, and forest soil conservation: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for the violations of this act; the state's share of the co-operative fire protection funds allocated by the federal government and any other funds provided for the purposes herein indicated. All other co-operative funds collected, appropriated or allocated for the use of the state forester, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where such forest plantings are helpful, and funds for other co-operative work, shall not be expended except for the specific purposes for which the same were collected, appropriated or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963; amd. Sec. 2, Ch. 30, L. 1971.

Amendments

The 1963 amendment deleted a sentence at the beginning of the section which read: "In compliance with section 81-1410, all moneys received from all public agencies, private agencies and individuals co-

operating with the state forester or the board of forestry, shall be deposited with the state treasurer and placed to the credit of the foresters' co-operative work fund."

The 1971 amendment added "and forest, forest range, forest water, and forest soil conservation" to the introductory sentence; and made a minor change in punctuation.

28-124. Disbursement of moneys. All co-operative moneys collected under the authority of section 28-111 and appropriated or allocated for the use of the state forester and deposited with the state treasurer shall be transferred to the earmarked revenue fund. Such moneys may then be paid out after approval and request of the said board and all vouchers or claims shall be signed on behalf of the said board by the secretary thereof.

History: En. Sec. 24, Ch. 128, L. 1939; amd. Sec. 218, Ch. 147, L. 1963.

Amendment

The 1963 amendment divided the former first sentence into two sentences; inserted "under the authority of section 28-111 and" after "collected"; deleted "in the foresters' co-operative work fund" after "state treasurer"; inserted "transferred to the earmarked revenue fund" at the end of the first sentence and "Such moneys

may then be" at the beginning of the second sentence; and deleted a former second sentence which read, "The state board of examiners is hereby authorized to approve for payment (out of any moneys available for purposes designated) all claims properly executed and submitted in the manner provided by law to the person, firm, corporation or public or private agency entitled thereto in compliance with the provisions of this act."

28-125. Ex officio fire wardens—powers. The officers, employees and persons hereinafter designated are hereby declared ex officio fire wardens to serve without compensation for the purposes of enforcing the penal provisions of this act, enforcing any rule or regulation promulgated by the Montana state board of forestry pursuant to this act, and enforcing any state or federal forest laws: Members of the Montana state board of forestry, the state forester and all regular employees of his office, officers of organized forest protection districts, members of the Montana highway patrol, all field officers, in the United States forest service residing in Montana, game and deputy game wardens, officers of the national park service and the Indian service situated in Montana. For those purposes set forth above, such ex officio fire wardens shall have all the powers vested by section 81-1413.

History: En. Sec. 25, Ch. 128, L. 1939; amd. Sec. 1, Ch. 276, L. 1971.

Amendments

The 1971 amendment inserted "enforce

ing any rule * * * forest laws" in the first sentence; inserted "For those purposes set forth above" in the second sentence; and made a minor change in phraseology.

CHAPTER 3—ESTABLISHMENT OF STATE FOREST AND CONSERVATION EXPERIMENT STATION

Section 28-304. Reports—disposition of income.

28-304. Reports—disposition of income. The state board of education may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand.

Income received by the station shall be deposited in the state treasury and used for the purposes of administering this act.

History: En. Sec. 4, Ch. 141, L. 1937; amd. Sec. 234, Ch. 147, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

CHAPTER 4—DISPOSAL OF SLASHINGS AND FOREST DEBRIS

- Section 28-408. Supervision by state forester.
 28-410. Contracts with owners of forest lands.
 28-412. Certificate of clearance.

28-401 to 28-403. (2778.5 to 2778.7) Repealed.**Repeal**

Sections 28-401 to 28-403 (Secs. 5 to 7, Ch. 95, L. 1927; Sec. 1, Ch. 81, L. 1931; Secs. 1, 2, Ch. 34, L. 1941; Secs. 1, 2, Ch. 83, L. 1949; Sec. 1, Ch. 18, L. 1953; Sec. 1,

Ch. 230, L. 1955), relating to burning of forest debris and disposal of slashings, were repealed by Sec. 4, Ch. 147, Laws 1971.

28-408. Supervision by state forester. The state forester, under such rules as the state board of forestry may provide, shall supervise the reduction or management of any fire hazard to the property of others created by the cutting of any forest product on private land in the state of Montana.

The reduction or management of fire hazards referred to in this act shall be in keeping with modern and progressive forest practices and more effective fire control and may include or be limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard.

History: En. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971.

in keeping with modern and progressive forest practices and more effective fire control and" in the second paragraph.

Amendments

The 1971 amendment inserted "shall be

28-410. Contracts with owners of forest lands. The state forester is hereby authorized and empowered to enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state of Montana whereby slash is created, and under said contract the state forester may assume all responsibility for the reduction or management of any fire hazard; any such contract shall provide the amount to be paid by the owner or operator to the state forester by reason of his agreement to assume the reduction or management, of such fire hazard. Said amount shall not exceed two dollars (\$2.00) for each one thousand (1000) feet log scale, or the equivalent thereof if forest products other than logs are cut.

History: En. Sec. 7, Ch. 207, L. 1959; amd. Sec. 2, Ch. 147, L. 1971.

amount specified in the final sentence from one dollar to two dollars for each one thousand feet.

Amendments

The 1971 amendment increased the

28-412. Certificate of clearance. Any owner or operator who has entered into a contract with the state forester for the reduction or management of any fire hazard and upon payment of the contract price in accordance with the terms of said contract and the full compliance with the terms of said contract by such owner or operator, shall be granted a certificate of clearance and be relieved of any and all further liability and responsibility for the removal or reduction of any such fire hazard; provided, however, the state forester may require a cash bond, equivalent

to the contract price, and conditioned upon the faithful performance of said contract, be deposited by the owner or operator with the state forester.

History: En. Sec. 9, Ch. 207, L. 1959;
amd. Sec. 3, Ch. 147, L. 1971.

Repealing Clause

Section 4 of Ch. 147, Laws 1971 read
"Sections 28-401 through 28-403, R. C. M.,
1947, are repealed."

Amendments

The 1971 amendment changed the proviso so as to make the cash bond discretionary with the state forester rather than mandatory.

CHAPTER 6—PROTECTION AND CONSERVATION OF FOREST AND FARM RESOURCES BY COUNTY COMMISSIONERS

Section 28-603. Powers of board.

28-601. Authority of county commissioners to protect range, etc.

References

Stocking v. Johnson Flying Service, 143
M 61, 387 P 2d 312.

28-603. Powers of board. (1) to (4) * * * [Same as parent volume.]

(5) The board is authorized to appropriate from the general fund of the county not to exceed fifteen thousand dollars (\$15,000) per year for the purchase, care and maintenance of fire-fighting equipment, or for the payment of wages to skilled operators of heavy mechanized equipment in the suppression of fires when deemed necessary; or if the general fund is budgeted to the full limit, the board may at any time fixed by law for levy and assessment of taxes levy a tax at such rate as in their judgment will be necessary to raise such needed sum not to exceed fifteen thousand dollars (\$15,000).

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971. maximum appropriation and levy under subsection (5) from \$5,000 to \$15,000.

References

Amendments

The 1971 amendment increased the

Stocking v. Johnson Flying Service, 143
M 61, 387 P 2d 312.

CHAPTER 7—TRANSPORTATION OF CONIFEROUS TREES

Section 28-701. Bill of sale required for transportation of coniferous trees on highway.

28-701. Bill of sale required for transportation of coniferous trees on highway. (1) It shall be unlawful and constitute a misdemeanor for any person to transport on the highways of this state, more than ten (10) coniferous trees without having in his possession a bill of sale showing his title for the trees. The bill of sale shall specify:

- (a) the date of its execution;
- (b) the name and address of the vendor or donor of the trees;
- (c) the name and address of the vendee or donee of the trees;

(d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) The foregoing provisions do not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or his agents;

(d) the transportation of coniferous trees by a common carrier.

History: En. Sec. 1, Ch. 137, L. 1967.

Title of Act

An act declaring it unlawful to transport on the highways of this state more

than ten (10) coniferous trees, unless the transporter has a bill of sale in his possession showing his title for the trees and providing a penalty for violation of this act.

TITLE 29—FRAUDULENT CONVEYANCES

CHAPTER 1—UNIFORM FRAUDULENT CONVEYANCE ACT

29-101. Definition of terms.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Fraudulent Conveyance Act: Idaho, New Mexico, Ohio, Oklahoma, and Virgin Islands.

29-104. Conveyances by insolvent.

Insolvency as Matter of Law

Debtor was insolvent as a matter of law at time he conveyed his ranch property to his children where his total liabilities exceeded his total assets by over \$7,000, including in that computation an

\$11,000 debt to the Federal Land Bank on which debtor remained principal debtor despite a purported assumption of the obligation by his son. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

29-105. Conveyances by persons in business.

Joinder of Actions

A creditor may join with his cause of action alleging indebtedness a second cause of action alleging that debtor's giving of mortgages and conveyance of certain property was without fair considera-

tion and made him insolvent, and a third cause of action alleging that after executing the mortgages, he had unreasonably small capital in his business. *Cahill-Mooney Constr. Co. v. Ayres*, 140 M 464, 373 P 2d 703, 709.

29-109. Rights of creditors whose claims have matured.

Money Judgment

The right to seek a money judgment is merely collateral to the primary right to

set aside the conveyance. *Cahill-Mooney Constr. Co. v. Ayres*, 140 M 464, 373 P 2d 703, 705.

CHAPTER 2—CERTAIN INSTRUMENTS AND TRANSFERS, WHEN VOID

29-206. (6944) Other provisions.

Compiler's Notes

Sections 18-201 to 18-205, referred to in this section in the parent volume, were

repealed by Sec. 10-102, Ch. 264, Laws 1963.

29-210. (8606) Question of fraud—how determined.

Sufficiency of Evidence

Finding of district court that transferor of property had no intent to defraud creditors was supported by substantial evidence of: a substantial cash payment to transferor; application of entire proceeds to transferor's debts; lack of secrecy in transaction; application of wife's interest in part of property transferred to hus-

band's debts; sale of fractional interest in mother's estate to brother also holding fractional interest therein, who presumably would be willing to pay more than stranger; and apparent existence of sufficient remaining assets with which to discharge transferor's remaining indebtedness. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

TITLE 30—GUARANTY, INDEMNITY AND SURETYSHIP

Chapter 6. Letters of credit, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 2—GUARANTORS—LIABILITY AND EXONERATION

30-208. (8188) What dealings with debtor exonerate guarantor.

Execution and Delivery of Note as Evidence

Debtor's execution and delivery to creditor of note as evidence of debt rather than as payment thereof did not exonerate debtor's surety in the absence of prejudice to the surety. Falls Implement Co. v. General Ins. Co. of America, 152 M 250, 448 P 2d 675.

who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon vendees, vendors, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. Scott v. Kyhl, 141 M 523, 379 P 2d 803.

References

United States v. Helena Office Supply Co., 256 F Supp 53, 54.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors,

CHAPTER 3—INDEMNITY

30-301. (8163) Indemnity defined.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

30-307. (8169) Rules for interpreting agreement of indemnity.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

30-308. (8170) When person indemnifying is a surety.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

CHAPTER 4—SURETYSHIP—SURETIES AND THEIR LIABILITY

30-407. (8201) Surety discharged by certain acts of the creditor.

Impairment of Remedies or Rights

Under subdivisions 1 and 2 of this section a surety is discharged when his remedies or rights are impaired by an act of the creditor. United States v. Helena Office Supply Co., 256 F Supp 53, 54.

Prejudice of Surety Required for Release

Subdivision 3 of this section and section 30-502 relieve a surety in cases of omission or neglect, but only after a request by the surety that the creditor proceed. United States v. Helena Office Supply Co., 256 F Supp 53, 54.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon

vendees, vendor, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. *Scott v. Kyhl*, 141 M 523, 379 P 2d 803.

CHAPTER 5—RIGHTS OF SURETIES AND CREDITORS**30-502. (8203) Surety may require the creditor to proceed, etc.****Prejudice of Surety Required for Release**

Subdivision 3 of section 30-407 and this section relieve a surety in cases of omis-

sion or neglect, but only after a request by the surety that the creditor proceed. *United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

CHAPTER 6—LETTERS OF CREDIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

30-601 to 30-609. (8210 to 8218) Repealed.**Repeal**

These sections (Secs. 3710 to 3718, Civ. C. 1895; Secs. 5695 to 5703, Rev. C. 1907; Secs. 8210 to 8218, R. C. M. 1921), relat-

ing to letters of credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 31—HIGHWAY PATROL

- Chapter 1. Montana highway patrol—creation—powers and duties, 31-103 to 31-105.1, 31-110, 31-114, 31-117, 31-123, 31-126 to 31-130, 31-135, 31-138, 31-146, 31-147, 31-149, 31-163 to 31-174.
2. Highway patrolmen's retirement system, 31-201, 31-205, 31-206, 31-209, 31-210, 31-222.

CHAPTER 1—MONTANA HIGHWAY PATROL—CREATION— POWERS AND DUTIES

- Section 31-103. Organization—rules and regulations.
- 31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement.
- 31-105. Appointment and promotion of officers—replacements and additions—reserve patrolmen—salaries—qualifications—probationary training—tenure—disciplinary action—hearing—appeal.
- 31-105.1. Salaries paid out of earmarked revenue fund.
- 31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock.
- 31-114. Highway patrol—fees—fines and forfeitures.
- 31-117. Drivers' examination section of highway patrol.
- 31-123. Chief—board.
- 31-126. What persons are exempt from license.
- 31-127. What persons shall not be licensed.
- 31-128. Classification of chauffeurs—special restrictions.
- 31-129. Instruction permits and temporary licenses.
- 31-130. Application for license, instruction permit or motorcycle endorsement.
- 31-135. Licenses issued to operators and chauffeurs—renewals and expiration thereof.
- 31-138. Duplicate certificates.
- 31-146. Mandatory revocation of license by board or chief upon proper authority.
- 31-147. Authority of board to suspend license or driving privilege or issue probationary license.
- 31-149. Period of suspension or revocation.
- 31-163. Driver license compact enacted—text.
- 31-164. Highway patrol board as licensing authority—information and documents furnished.
- 31-165. Reimbursement of compact administrator.
- 31-166. Governor as executive head.
- 31-167. Report to highway patrol board of suspension or revocation of licenses.
- 31-168. Offenses furnishing ground for suspension or revocation of license.
- 31-169. Review of administrative actions.
- 31-170. Authority of board to issue identification cards.
- 31-171. Rules and regulations for identification cards.
- 31-172. Immunity of public entities for inaccurate identification cards.
- 31-173. Agents for issuance of identification cards.
- 31-174. Fees for identification cards.

31-102. Board defined—chairman.

Cross-References

Board abolished and functions transferred, sec. 82A-1205(2).

31-103. Organization—rules and regulations. The Montana highway patrol board shall maintain a permanent place of business at the state capital and shall meet at least once each month for the purpose of transacting its business and it may make, promulgate and amend rules and regulations which prescribe procedures and practice requirements of the Montana highway patrol. The Montana highway patrol shall provide for clerical help, provide for the maintenance of the patrol and for the employment and supervision of the patrol in conformity with the provisions of this act. The Montana highway patrol shall furnish the governor of the state of Montana with automobile transportation upon his request, provided that such transportation shall be limited to travel and transportation of the governor while on official business of the state of Montana.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971.

Effective Date

Section 2 of Ch. 245, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Amendments

The 1971 amendment added to the end of the first sentence the clause authorizing rules and regulations.

31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement. The board shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth, and shall receive a salary fixed by the board with approval of the board of examiners within the limits of the legislative appropriation for such purpose, and necessary traveling expenses. The chief shall have direct control and supervision of all patrolmen, subject to the approval of the Montana highway patrol board. The person named as chief shall have been a continuous resident of Montana for at least five (5) years. The chief, with the approval of the board and within the limits of any appropriation made available for such purposes, shall:

1. Designate the authority and responsibility in each such rank, grade and position;
2. Formulate standards, policies and qualifications in the selection of recruit patrolmen;
3. Prescribe the official uniform of the Montana highway patrol;
4. Station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;
5. Charge against each employee the value of property of the state, lost or destroyed through the carelessness or neglect of such employee;
6. Discharge, demote, or temporarily suspend after hearing as provided in section 31-105, any patrolman of the department;
7. Have purchased, or otherwise acquired, by the purchasing department of the state, motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967.

Amendments

The 1967 amendment substituted "chief" for "supervisor" wherever it appears in the first paragraph; inserted

"have the rank of colonel and shall" after "who shall"; substituted "fixed by the board with approval of the board of examiners within the limits of the legislative appropriation for such purpose" for "of seven thousand dollars (\$7,000.00) per annum" after "shall receive a salary"; deleted "for such Montana highway patrol" at the end of the first paragraph; and substituted "patrolman" for "employee" in subparagraph 6.

Cross-References

Attorney general to select patrol chief, sec. 82A-1205(2).

Functions of patrol and chief transferred, sec. 82A-1206.

31-105. Appointment and promotion of officers — replacements and additions — reserve patrolmen — salaries — qualifications — probationary training — tenure — disciplinary action — hearing — appeal. (1) Appointments and promotions. (a) The board shall designate captains, lieutenants, sergeants, and patrolmen in such numbers as the board may deem necessary, but within the limits of the legislative appropriation made available for such purposes.

(b) Replacements and additions to the highway patrol force shall be chosen in equal numbers from the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the board may in its discretion substitute other qualified applicants from any other districts.

(c) Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

(d) Captains, lieutenants and sergeants shall be selected from the patrolmen by the chief, subject to the approval of the highway patrol board. The duties and jurisdiction of the captains, lieutenants and sergeants shall be outlined, defined and under the control of the chief subject to the approval of the Montana highway patrol board.

(2) Salaries. (a) The Montana highway patrol board shall, within the limits of appropriations made available for such purpose, prepare a schedule of compensation and expenses which shall be uniform within all grades and submit it to the state board of examiners for their approval.

(b) The base salary of the captains, lieutenants, sergeants and patrolmen shall be fixed by the board, with the approval of the state board of examiners. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen. These salaries shall be increased one per cent (1%) per year for each additional year of service.

(3) Qualifications. (a) Patrolmen shall possess the following qualifications:

- (i) Sound and active physical and mental condition.
- (ii) Good moral character.
- (iii) Resident of Montana for at least one (1) year immediately prior to appointment.
- (iv) Pass a satisfactory test in the operation of automobiles.
- (v) Citizens of the United States and state of Montana.

(4) Probationary training. (a) All new patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the probationary patrolmen will automatically be discharged.

(b) All newly appointed captains, lieutenants and sergeants shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the captains, lieutenants and sergeants will automatically revert to their previous ranks without prejudice.

(5) Tenure of office. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, or patrolman under and pursuant to the provisions of this act, except as provided in subsection (4) above, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one (1) or more of the causes specified in the following subsection.

(6) Suspension, demotion or discharge. Cause for suspension, demotion or discharge will be:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

(b) Gross neglect of duty or willful violation or disobedience of orders or regulations.

(c) Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

(d) Conduct unbecoming an officer.

(e) Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

(f) Sleeping while on duty.

(g) Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

(h) Gross inefficiency in performing duties.

(i) Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate.

(j) Willful disobedience of rules and regulations adopted by the board, governing the conduct and discipline of members of the patrol.

(7) Method of preferring charges. (a) The charge or charges against any patrolman shall be made in writing and shall be signed and sworn to by the person making the charge or charges.

(b) The written charge or charges shall be filed with the chief of the Montana highway patrol.

(c) Any charge or charges which could result in the suspension or discharge of the chief or a captain shall be filed directly with the highway patrol board.

(d) When charges are filed and the chief believes that such charge or charges constitute grounds for suspension, demotion or discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing.

(e) When charges are filed and the chief believes such charge or charges do not constitute grounds for suspension, demotion or discharge he shall dismiss such charges.

(f) The highway patrol board shall have the authority to order the chief to file charges with the board when the chief in his judgment does not believe the charge or charges warrant a hearing.

(8) Authority to suspend, demote or discharge. (a) When the highway patrol chief has cause to believe that any member of the highway patrol has violated any of the hereinabove grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the Montana highway patrol board, suspend, demote or reprimand the member.

(b) If the chief orders a hearing he may suspend such patrolman pending the rendition of the decision made in such case.

(9) Length of suspension—demotion pay status. (a) Any member under suspension shall be on leave without pay and for a period not to exceed thirty (30) days in time.

(b) In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

(10) Notification of hearing. (a) The chief shall, at least ten (10) days before the time appointed for a hearing, serve written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges, on the accused patrolman personally, if his whereabouts is known, in the state of Montana.

(b) If at the time, the whereabouts of the accused patrolman is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the written notice to him at his last known place of residence in Montana.

(11) Hearing. (a) The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

(b) The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

(c) The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing.

(d) The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the chief and with the patrolman accused also.

(12) Disciplinary action. (a) If, after a hearing, the highway patrol board finds that any such charge or charges, made against the patrolman

be true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

(b) If after the hearing, the highway patrol board finds that the charge or charges made against the patrolman not be true, the board shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

(13) Right to appeal. (a) Any patrolman who is suspended, demoted, or discharged may have a right of appeal to the district court of Lewis and Clark county.

(b) Such appeal must be made within ten (10) days after such decision or determination of the highway patrol board.

(c) The district court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court.

(d) If the decision or determination of the highway patrol board shall be finally reversed or modified by the district court, the accused patrolman shall be reinstated in his position and the highway patrol board shall pay to the said patrolman any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

31-105.1. Salaries paid out of earmarked revenue fund. All salaries of members of the highway patrol shall be paid out of the earmarked revenue fund of the highway department.

History: En. Sec. 1, Ch. 285, L. 1971. members of the highway patrol be paid out of funds of the highway department.

Title of Act

An act to provide that all salaries of

31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock. In addition to the above duties, the highway patrol supervisor and all patrolmen are authorized under this act to make arrests for the following offenses committed; if committed in the presence of said supervisor or any of said patrolmen, or if committed in a rural district, upon the request of a peace officer, or if committed in a city or town of less than twenty-five hundred (2500) inhabitants, upon the request of any peace officer, or the mayor of said city or town: The crimes of murder, assault with a deadly weapon, arson, burglary, larceny, kidnapping, illegal transportation of narcotics, or violation of the Dyer act regarding the transportation of stolen automobiles. Provided, that such highway patrolmen shall have no authority and are expressly forbidden to make arrests in labor disputes or in preventing violence in connection

with strikes, and shall not be permitted to perform any duties whatsoever in connection with labor disputes, strikes or boycotts.

Patrolmen shall be deemed police officers in making arrests in all offenses occurring on the highways and in the use of motor vehicles or the registration thereof, and for the purpose of serving warrants of arrest in connection with such violations.

The patrolmen are also hereby empowered to stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products; and whenever the patrolmen have good reason to believe that such livestock or livestock products have been stolen, they are empowered to take possession of the same until such livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965.

Amendment

The 1965 amendment deleted from the end of the first paragraph a clause reading "and shall not be permitted to congregate or act as a unit in one county to suppress riots or preserve the peace"; and deleted the former third paragraph, for text of which see parent volume.

Repealing Clause

Section 2 of Ch. 63, Laws 1965 repealed all acts parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 63, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

Cross-References

Authority of members of Montana university system security department to issue traffic citations, sec. 75-8514.

31-114. Highway patrol—fees—fines and forfeitures. All fees, fines and forfeitures collected in any court from persons apprehended or arrested by patrolmen for violation of this act and the laws and regulations relating to the use of state highways and the operation of vehicles thereon must be paid to the state treasurer of Montana and by him credited to the general fund of the state, except for that portion of the fines, as provided in section 4 [75-5304] of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund; and at the time of payment of any such fee, fine or forfeiture there shall be filed with the state treasurer a complete statement showing the total of the fees, fines or forfeitures received or incurred, which statement shall give the title of the court and cause and be subscribed to by the person or officer making such payments.

History: En. Sec. 14, Ch. 199, L. 1943; amd. Sec. 10, Ch. 226, L. 1965; amd. Sec. 9, Ch. 214, L. 1969.

Compiler's Notes

Section 75-5304, referred to in this section, was repealed by sec. 12, Ch. 214, Laws 1969. For similar provisions in current law, see sec. 75-7902.

Amendments

The 1965 amendment inserted "except the penalty assessments levied and paid as provided for in section 4 of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund" after "general fund of the state."

The 1969 amendment substituted "except for that portion of the fines, as pro-

vided in section 4 of this act" for "ex- paid or provided for in section 4 of this
cept the penalty assessments levied and act."

31-117. Drivers' examination section of highway patrol. There is hereby created a drivers' examination section of the Montana highway patrol, under the direct control and supervision of the Montana highway patrol board. Said board shall maintain a permanent place of business at the state capitol and shall meet at least once each month for the purpose of transacting business either as the drivers' examining board, the highway patrol board, or jointly for the two. The board shall select a chief examiner, and deputy chief examiner, as many assistant chief examiners and examiners as it deems necessary and shall provide for the necessary clerical help.

The chief examiner, deputy chief examiner, assistant chief examiners and all examiners shall have the same qualifications as are required for members of the Montana highway patrol. The chief examiner shall rank as a captain, the deputy chief examiner as a lieutenant, the assistant chief examiners shall rank as sergeants, and the examiners shall rank as patrolmen.

History: En. Sec. 1, Ch. 267, L. 1947;
amd. Sec. 1, Ch. 141, L. 1951; amd. Sec.
1, Ch. 101, L. 1957; amd. Sec. 1, Ch. 42,
L. 1969.

Amendments

The 1969 amendment provided for the selection of a "deputy chief examiner" by the board.

31-123. Chief—board. (a) Chief. The chief of the Montana highway patrol.

(b) * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 267, L. 1947;
amd. Sec. 1, Ch. 155, L. 1969.

Amendments

The 1969 amendment substituted "chief" for "supervisor" in subsection (a).

31-126. What persons are exempt from license. The following persons are exempt from license hereunder:

1 to 3. * * * [Same as parent volume.]

4. A nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur subject to the age limits applicable to chauffeurs in this state;

5 and 6. * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 267, L. 1947;
amd. Sec. 1, Ch. 95, L. 1955; amd. Sec. 1,
Ch. 137, L. 1961; amd. Sec. 1, Ch. 133, L.
1969.

Amendments

The 1969 amendment, in subdivision (4), deleted a requirement that a nonresident be licensed as a chauffeur in Montana before accepting employment as a chauffeur for a Montana resident.

31-127. What persons shall not be licensed. The board shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen (16) years, with these exceptions:

(a) The board may issue an operator's license to a person who is fifteen (15) years if he has passed a driver's education course approved by the Montana highway patrol and the superintendent of public instruction.

(b) The board may issue a restricted license as hereinafter provided to any person who is at least thirteen (13) years of age;

2 to 8. * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 267, L. 1947; set out in the preliminary paragraph of
amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, subsection (1) from fifteen to sixteen;
Ch. 227, L. 1965. and inserted paragraph (1) (a).

Amendment

The 1965 amendment changed the format of subsection (1); increased the age

Cross-Reference

Driver education courses, secs. 75-7901 to 75-7907.

31-128. Classification of chauffeurs—special restrictions. (a). * * *
[Same as parent volume.]

(b) No person who is under the age of twenty-one (21) years shall drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons for compensation nor in either event until he has been licensed as a chauffeur for either such purpose and the license so indicates. The board shall not issue a chauffeur's license for either such purpose unless the applicant has had at least one (1) year of driving experience prior thereto and the board is fully satisfied as to the applicant's competency and fitness to be employed.

History: En. Sec. 12, Ch. 267, L. 1947;
amd. Sec. 1, Ch. 26, L. 1969.

Amendments

The 1969 amendment, in subsection (b), deleted a requirement that three people certify an applicant's good character.

31-129. Instruction permits and temporary licenses. (a) Any person satisfying the age requirements specified in 31-127 (1), may apply to the board for an instruction permit. The board may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of six (6) months when accompanied by a licensed operator or chauffeur who is occupying a seat beside the driver.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 13, Ch. 267, L. 1947;
amd. Sec. 1, Ch. 120, L. 1961; amd. Sec. 1,
Ch. 55, L. 1969.

substituted "satisfying the age requirement specified in 31-127 (1)" for "who is at least fifteen (15) years of age" and deleted an exception authorizing the holder of an instruction permit to operate a motorcycle.

Amendments

The 1969 amendment, in subsection (a),

31-130. Application for license, instruction permit or motorcycle endorsement. (a) Every application for an instruction permit, operator's or chauffeur's license or motorcycle endorsement shall be made upon a form furnished by the board. Every application shall be accompanied by the proper fee and payment of such fee shall entitle the applicant

to not more than three attempts to pass the examination within a period of six (6) months from the date of application.

(b). * * * [Same as parent volume.]

(c) Whenever application is received from an applicant previously licensed by any other jurisdiction or jurisdictions, the board shall request a copy of such applicant's driving record from such previous licensing jurisdiction or jurisdictions. When received, such driving records shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

History: En. Sec. 14, Ch. 267, L. 1947;
amd. Sec. 1, Ch. 28, L. 1969.

Amendments

The 1969 amendment inserted provisions for applications for "motorcycle endorsement" in subsection (a) and added subsection (c).

31-131. Application of minors.

References

Castle v. Thisted, 139 M 328, 363 P 2d 724, 725.

31-135. Licenses issued to operators and chauffeurs—renewals and expiration thereof. (a) The highway patrol board shall have authority to appoint county treasurers and other qualified officers to act as its agent or agents for the sale of drivers' licenses, and shall make necessary rules and regulations governing such sales. The board, upon payment of the fees specified in this act, (of which sum five per cent (5%) shall be retained by the county treasurers for use of the county general fund) shall issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, and such licenses shall contain a photograph of such licensee in such size and form as may be prescribed by the highway patrol board, a distinguishing number issued to the licensee, the full name, date of birth, resident address, and a brief description of the licensee and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink, immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(b) The board shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight, and may also, in the board's discretion, have such applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be deemed to have applied for renewal of a Montana operator's or chauffeur's license if such application is made within three (3) months of the expiration of such license.

(c) Licenses issued shall expire on the anniversary of the date of birth of the licensee four (4) years or less after the date of issue. Notwithstanding the foregoing provisions, the highway patrol board shall stagger initial license terms for the purpose of equalizing annual issuance of licenses and shall collect license fees proportionate to the term of such licenses.

(d) Whenever the board issues an original license to a person under the age of eighteen (18) years, such license shall be designated and clearly marked as a "provisional license." Any license so designated and marked may be suspended by the board for a period of not more than twelve (12) months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the board may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(e) It shall be unlawful for any person to have in his possession or under his control, more than one (1) Montana operator's or chauffeur's license at any one time.

(f) Driver license fees. Fees for driver license shall be as follows:

1. Driver's license—two dollars (\$2) per year or fraction thereof.

History: En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch. 23, L. 1967; amd. Sec. 1, Ch. 288, L. 1971; amd. Sec. 4, Ch. 423, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 288 and once by Ch. 423. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1963 amendment completely re-wrote subsection (b), for previous text of which see parent volume; and made a minor change in punctuation.

The 1967 amendment inserted "(of which sum * * * county general fund)" in the second sentence of subsection (a); and made minor changes in subsections (a) and (b).

Chapter 288, Laws of 1971, substituted "the fees specified in this act" for "four dollars (\$4)" in the second sentence of subsection (a); deleted language providing for biennial expiration of licenses after "as applied for" in the second sentence

of subsection (a); inserted "and such licenses" before "shall contain a photograph" in the second sentence of subsection (a); substituted the second sentence of subsection (b) for "This examination shall not be required of any applicant who has successfully completed such an examination within the preceding five (5) year period"; inserted subsection (c); redesignated former subsections (c) and (d) as subsections (d) and (e); and added subsection (f).

Chapter 423, Laws of 1971, reduced the age specified in the first sentence of the present subsection (d) from 21 to 18 years.

Effective Date

Section 2 of Ch. 228, Laws 1963 provided the act should be in effect upon its passage and approval. Approved March 9, 1963.

Validity of Amendment

The 1961 amendment of this section [House Bill No. 342] was not rendered invalid because the deciding vote therein was cast by the lieutenant governor on the third reading, where at that time the senators then present and voting, were equally divided. *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

31-138. Duplicate certificates. In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this act is lost or destroyed, the person to whom the same was issued may, upon the payment of a fee of one dollar (\$1.00), obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the board that such permit or license has been lost or destroyed.

History: En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee for duplicate certificates from 50¢ to \$1.00.

31-146. Mandatory revocation of license by board or chief upon proper authority. The board or chief upon proper authority shall forthwith revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

1. * * * [Same as parent volume.]

2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof;

3 to 6. * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957; amd. Sec. 1, Ch. 125, L. 1961; amd. Sec. 2, Ch. 155, L. 1969.

Amendments

The 1969 amendment substituted "chief" for "supervisor" in the first paragraph and inserted "or willfully * * * motor vehicle" in subdivision (2).

31-147. Authority of board to suspend license or driving privilege or issue probationary license. (a) The board is hereby authorized to suspend the license or driving privilege of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

1. Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

2. Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

3. Is an habitually reckless or negligent driver of a motor vehicle;

4. Is incompetent to drive a motor vehicle;

5. Has permitted an unlawful or fraudulent use of such license as specified in section 31-153;

6. Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation; or

7. Has falsified his date of birth on his application for a driver's license.

(b). * * * [Same as parent volume.]

(c) Upon suspending the license of any person or upon placing such person on probation, as hereinbefore in this section authorized, the board shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty (20) days after receipt of such request in the county wherein the licensee resides unless the board and the licensee agree that such hearing may be held in some other county. Upon such hearing the chief or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the board shall either rescind its order of suspension or probation, or, good cause appearing therefor, may af-

firm, reduce or extend the period of probation or suspension of such license.

History: En. Sec. 31, Ch. 267, L. 1947; amd. Sec. 1, Ch. 101, L. 1961; amd. Sec. 1, Ch. 137, L. 1969.

Suspension of License Not Punishment

Amendments

The 1969 amendment deleted former subdivision (a)(1) authorizing suspension for "offense for which mandatory revocation of license is required upon conviction," designated former subdivisions (a)(2) to (a)(8) as (a)(1) to (a)(7), added "as specified in section 31-153" to subdivision (a)(5), and substituted "chief" for "supervisor" in subsection (c).

The purpose and nature of the suspension of a driver's license is for the protection of the unsuspecting public and does not constitute "punishment" as understood within the meaning of the law, so that highway patrol board can take into consideration past driving violations before a previous suspension of a driver's license in suspending his license again. In re France, 147 M 283, 411 P 2d 732.

31-149. Period of suspension or revocation. (a) The board shall not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one (1) year, except as permitted under sections 31-148, 31-155, 53-424 and 53-430, R. C. M. 1947.

(b) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, such person may make application for a new license as provided by law, but the board shall not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. Provided, however, when any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof, the board shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend or revoke the license or driving privilege of such person for a period of sixty (60) days. Upon receiving a report of a conviction or forfeiture of bail or collateral for a subsequent such offense, within five (5) years thereof, the board shall suspend or revoke the license or driving privilege of such person for a period of one (1) year.

(c) The revocation period for all revocations made mandatory by section 31-146, R. C. M. 1947, shall be one (1) year, except as provided in subsection (b) of this section.

History: En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957; amd. Sec. 1, Ch. 161, L. 1961; amd. Sec. 1, Ch. 339, L. 1969.

References

In re France, 147 M 283, 411 P 2d 732.

Amendments
The 1969 amendment inserted "or know-

31-163. Driver license compact enacted—text. This act shall be known and may be cited as the "Driver License Compact."

ARTICLE I—FINDINGS AND DECLARATION OF POLICY

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II—DEFINITIONS

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III—REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the

court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV—EFFECT OF CONVICTION

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V—APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to

issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI—APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party state and a nonparty state.

ARTICLE VII—COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall

remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 154, L. 1963.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation in driver licensing and the reporting of convictions and to be known as the Driver License Compact; setting forth the basic purposes of the compact; defining certain terms used in act; requiring party state to report convictions to licensing authority of home state of licensee; providing party state may give same effect of conviction regardless of jurisdiction of occurrence; providing that license authority in party state shall not issue license to party whose license has been suspended, revoked or to

party who fails to surrender license of another party state; providing that adoption of compact will not nullify existing statutes; providing for administrator of act; providing for entry and withdrawal from compact; providing for construction and severability of act; providing that if any part of act held unconstitutional it shall not affect remaining parts of act; defining "licensing authority" and "executive head"; providing authority to furnish information to member states; providing that administrator shall not be entitled to additional compensation; requiring agencies or court to report to state agency; repealing all acts or parts of acts in conflict herewith.

31-164. Highway patrol board as licensing authority—information and documents furnished. As used in the compact, the term "licensing authority" with reference to this state, shall mean the Montana highway patrol board. Said board shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact.

History: En. Sec. 2, Ch. 154, L. 1963.

31-165. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History: En. Sec. 3, Ch. 154, L. 1963.

31-166. Governor as executive head. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

History: En. Sec. 4, Ch. 154, L. 1963.

31-167. Report to highway patrol board of suspension or revocation of licenses. Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the Montana highway patrol board within five (5) days on forms furnished by the Montana highway patrol board.

History: En. Sec. 5, Ch. 154, L. 1963.

31-168. Offenses furnishing ground for suspension or revocation of license. Items enumerated in Article IV (a), subsections (1), (2), (3)

and (4) [31-163] of this act refer specifically to sections 94-2507, 32-2142, 94-114 and 32-1202, Revised Codes of Montana, 1947, respectively.

In addition to convictions mentioned above the Montana highway patrol board for the purpose of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for convictions of: 1. perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (31-154, Revised Codes of Montana, 1947) and; 2. three (3) convictions of reckless driving committed within a period of twelve (12) months (32-2143, Revised Codes of Montana, 1947).

History: En. Sec. 6, Ch. 154, L. 1963.

31-169. Review of administrative actions. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the "Driver License Compact" shall be subject to review pursuant to the provisions of section 31-152, Revised Codes of Montana, 1947, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

History: En. Sec. 8, Ch. 154, L. 1963.

pealed all acts or parts of acts in conflict therewith.

Repealing Clause

Section 7 of Ch. 154, Laws 1963 re-

31-170. Authority of board to issue identification cards. The Montana highway patrol board is hereby authorized to issue identification cards to any person over the age of eighteen (18) years not the holder of a valid driver's license.

History: En. Sec. 1, Ch. 53, L. 1971.

board to issue identification cards to persons over eighteen (18) years of age.

Title of Act

An act to authorize the highway patrol

31-171. Rules and regulations for identification cards. The highway patrol board shall formulate reasonable rules and regulations for the application, issuing identification cards and cancellation thereof, and require the furnishing of such information necessary for the purpose of this act.

History: En. Sec. 2, Ch. 53, L. 1971.

31-172. Immunity of public entities for inaccurate identification cards. No public entity shall be liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in identification cards provided for in this article.

History: En. Sec. 3, Ch. 53, L. 1971.

identification cards a misdemeanor, sec. 94-2014.

Cross-References

Procurement or production of false

31-173. Agents for issuance of identification cards. The highway patrol board shall have authority to appoint county treasurer and other

qualified officers to act as its agent for the issuance of such identification cards.

History: En. Sec. 4, Ch. 53, L. 1971.

31-174. Fees for identification cards. Fees not in excess of one dollar (\$1) for such identification cards shall be collected and credited to a revolving fund which shall be known as the Montana Highway Patrol Identification Card Fund. Such fund shall be used by the Montana highway patrol to defray the cost of issuing identification cards.

History: En. Sec. 5, Ch. 53, L. 1971.

CHAPTER 2—HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

- Section 31-201. Definitions.
31-205. Payments into the Montana highway patrolmen's retirement account—investment.
31-206. Rules and regulations—actuarial data.
31-209. Payments by contributors.
31-210. Contributions by the state of Montana.
31-222. Nomination of beneficiary.

31-201. Definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired patrolman," any person in receipt of a retirement allowance under this act.

"Board," the Montana highway patrolmen's retirement board.

"Compulsory retirement age," sixty years of age.

"Contributor," any person who has accumulated deductions in the fund, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana highway patrolmen's retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years' service or more.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol.

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 37, L. 1945;
amd. Sec. 1, Ch. 243, L. 1955; amd. Sec.
201, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the definition of "Account" for a paragraph reading, "'Fund,' the Montana highway patrolmen's retirement fund."

31-203. Montana highway patrolmen's retirement board.

Cross-References

Quasi-judicial functions transferred, sec. 82A-211.
Board abolished and functions transferred, sec. 82A-202(4).

31-205. Payments into the Montana highway patrolmen's retirement account—investment. All appropriations made by the state of Montana, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit said payments to the Montana highway patrolmen's retirement account in the agency fund. Whenever there is on deposit in the Montana highway patrolmen's retirement account a sum in excess of twenty-five thousand dollars (\$25,000.00), such excess will be invested by the state board of land commissioners as part of the long term investment fund and any of the account less than twenty-five thousand dollars (\$25,000.00) in amount shall be invested by the state board of land commissioners as part of the short term investment fund when so directed by the Montana highway patrolmen's retirement board.

History: En. Sec. 5, Ch. 37, L. 1945;
amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1,
Ch. 176, L. 1953; amd. Sec. 202, Ch. 147,
L. 1963.

patrolmen's retirement account in the agency fund" for references to the "Montana highway patrolmen's retirement fund."

Cross-References

Amendment: Board of land commissioners functions transferred, sec. 82A-205(1)(c).
The 1963 amendment substituted the references to the "Montana highway pa-

31-206. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary, and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the

contributors to and the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund" in the last sentence.

31-209. Payments by contributors. Every member shall be required to contribute into the account a sum equal to five per cent (5%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account, provided that when a member has served twenty-five (25) years in the Montana highway patrol all payments by him and contributions to his credit from the account shall cease.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963.

posited to his credit in the account" for "credited to his account in the fund"; and substituted "account" for "fund" in two other places.

Amendment

The 1963 amendment substituted "de-

31-210. Contributions by the state of Montana. The state of Montana shall annually contribute to the account fifteen per cent (15%) of all moneys received by the state of Montana from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund."

31-214. Disability retirement allowance.

Evidence of Disability

State highway patrolman was not entitled to disability retirement allowance for total and permanent disability in light of evidence that claimant's condition did not prevent him from hunting, swimming and bowling and evidence of four medical

doctors that patrolman was not permanently disabled, notwithstanding evidence of osteopath that patrolman was totally and permanently disabled in so far as being highway patrolman. State ex rel. Spear v. State Highway Patrol Retirement Board, 149 M 7, 422 P 2d 348.

31-222. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board.

History: En. Sec. 22, Ch. 37, L. 1945; amd. Sec. 1, Ch. 107, L. 1967.

Effective Date

Section 2 of Ch. 107, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

Amendments

The 1967 amendment deleted "up until, but not after, the time of retirement" after "with the board" at the end of this section.

TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

- Chapter 2. Road taxes and bonds, Repealed—Section 12-109, Chapter 197, Laws of 1965.
3. Supervision of public highways, 32-317 to 32-321.
 6. Special road districts, abolishment, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 9. Corrugated iron culverts, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 10. Obstructions and encroachments, 32-1021, 32-1022.
 11. Speed and traffic regulations, 32-1122, 32-1123, 32-1126, 32-1127, 32-1131.
 12. Uniform Accident Reporting Act, 32-1208.
 13. Good roads day, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 16. State highway commission and highway engineer—powers and duties, 32-1619, 32-1627, 32-1628, 32-1632 to 32-1641.
 18. Stock lane law, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 19. Montana toll bridge authority, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 20. Controlled access highways, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 21. Uniform act regulating traffic on highways, 32-2124.3 to 32-2124.5, 32-2134.1 to 32-2134.3, 32-2137, 32-2142 to 32-2142.3, 32-2143.1 to 32-2144, 32-2146, 32-2148, 32-2170, 32-2173, 32-2174, 32-2177, 32-2197, 32-2198, 32-21-105, 32-21-130, 32-21-132, 32-21-143.1 to 32-21-143.4, 32-21-149, 32-21-149.1, 32-21-150.1 to 32-21-150.3, 32-21-155.1, 32-21-163, 32-21-164, 32-21-166 to 32-21-175.
 22. Highway code—general provisions, 32-2201 to 32-2203.
 23. Classification of highways, 32-2301, 32-2302.
 24. Assent to federal aid—state highway commission, powers and duties, 32-2401 to 32-2427.
 25. State highway engineer and other employees, 32-2501 to 32-2503.
 26. Distribution and apportionment of highway construction funds, 32-2601, 32-2603 to 32-2611.
 27. Montana toll bridge authority, 32-2701 to 32-2716.
 28. Board of county commissioners responsibility for county roads, 32-2801 to 32-2815.
 29. Board of county commissioners responsibility for bridges and ferries, 32-2901 to 32-2907.
 30. County road superintendent, 32-3001 to 32-3007.
 31. Local improvement districts, 32-3101 to 32-3131.
 32. State vehicle fees—payment, expiration and disposition, 32-3201 to 32-3206.
 33. Additional truck, trailer and bus fees—sales tax on vehicles—excess weight penalties, 32-3301 to 32-3310, 32-3312 to 32-3317.
 34. Fees for drive-away or tow-away transporters, 32-3401 to 32-3406.
 35. Bond issues for state toll bridges, 32-3501 to 32-3509.
 36. County tax levies for road and bridge construction, 32-3601 to 32-3605.
 37. Local use of registration and other vehicle fees, 32-3701 to 32-3707.
 38. County road and bridge bonds, 32-3801 to 32-3806.
 39. Acquisition and disposition of property by state, 32-3901 to 32-3931.
 40. Acquisition and disposition of property by county, 32-4001 to 32-4018.
 41. Contracts of state highway commission, 32-4101 to 32-4103.
 42. Contracts of counties and local improvement districts, 32-4201 to 32-4207.
 43. Control of access, 32-4301 to 32-4308, 32-4308.1, 32-4309 to 32-4311.
 44. Good roads day—obstructions, encroachments and debris on highways, 32-4401 to 32-4410.
 45. Junkyards along roads, 32-4513 to 32-4523.
 46. Traffic safety program, 32-4601 to 32-4607.
 47. Zoning and advertising regulation along highways, 32-4701 to 32-4714.
 48. Excavations in public streets, 32-4801 to 32-4808.

CHAPTER 1—HIGHWAYS—DEFINITIONS AND CLASSIFICATIONS

32-102 to 32-107. (1611 to 1616) Repealed.**Repeal**

These sections (Sec. 10, p. 106, L. 1874; Sec. 2600, Pol. C. 1895; Secs. 1, 3, 6, Ch. 44, L. 1903; Secs. 2 to 7, Ch. 72, L. 1913; Secs. 2 to 7, Ch. 141, L. 1915; Secs. 2 to 7, Ch. 172, L. 1917; Sec. 1, Ch. 247, L. 1959),

relating to definitions and classifications of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2203, 32-2301, 32-2808, and 32-4014.

CHAPTER 2—ROAD TAXES AND BONDS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-201 to 32-208. (1617 to 1620) Repealed.**Repeal**

These sections (Sec. 19, p. 110, L. 1874; Sec. 1, p. 119, L. 1885; Secs. 1796, 1837, 1838, 5th Div. Comp. Stat. 1887; Secs. 1, 3, p. 176, L. 1897; Sec. 1, p. 69, L. 1899; Secs. 11, 26, 27, Ch. 44, L. 1903; Secs. 1 to 4, Ch. 2, Ch. 72, L. 1913; Secs. 1 to 4, Ch. 2, Ch. 141, L. 1915; Secs. 1 to 4, Ch. 2, Ch.

172, L. 1917; Sec. 1, Ch. 2, L. 1933; Secs. 1 to 4, Ch. 69, L. 1945; Sec. 1, Ch. 145, L. 1947; Sec. 1, Ch. 149, L. 1947), relating to road taxes and bonds, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3601 to 32-3605 and 32-3801.

CHAPTER 3—SUPERVISION OF PUBLIC HIGHWAYS

- Section 32-317. Designation of emergency area near construction project.
 32-318. Notice of designation of emergency area—removal of designation.
 32-319. Livestock not to run at large in emergency area.
 32-320. Impounding of animals at large—notice to owner—fees and mileage.
 32-321. Penalty for violations.

32-302 to 32-314. (1622 to 1632) Repealed.**Repeal**

These sections (Sec. 12, p. 119, L. 1873; Sec. 24, p. 113, L. 1874; Sec. 4, p. 118, L. 1885; Secs. 1801, 1802, 1805, 1834, 5th Div. Comp. Stat. 1887; Secs. 2632, 2695, 2700, 2701, 2710, 2711, 2720, 2740, 2741, Pol. C. 1895; Secs. 10, 33 to 36, 51, 52, Ch. 44, L. 1903; Secs. 1, 2, Ch. 76, L. 1905; Secs. 2 to 13, Ch. 3, Ch. 72, L. 1913; Secs. 2 to 13, Ch. 3, Ch. 141, L. 1915; Sec. 1, Ch. 106, L. 1917; Secs. 2 to 12, Ch. 3, Ch. 172, L. 1917; Secs. 1 to 4, Ch. 15, Ex. L. 1919; Sec. 1, Ch. 128, L. 1925;

Secs. 1, 2, Ch. 102, L. 1927; Secs. 1, 2, Ch. 21, L. 1929; Sec. 1, Ch. 59, L. 1929; Sec. 1, Ch. 81, L. 1929; Sec. 1, Ch. 176, L. 1929; Sec. 1, Ch. 179, L. 1931; Sec. 1, Ch. 102, L. 1947; Sec. 1, Ch. 84, L. 1953; Sec. 1, Ch. 109, L. 1955; Sec. 1, Ch. 116, L. 1957; Sec. 1, Ch. 128, L. 1959; Sec. 2, Ch. 260, L. 1965), relating to the functions of the county commissioners, county surveyors, and road supervisors with respect to roads, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2801 to 32-3007.

32-316. (1634) Repealed.**Repeal**

This section (Sec. 2742, Pol. C. 1895; Sec. 53, Ch. 44, L. 1903; Sec. 3, Ch. 76, L. 1905; Sec. 14, Ch. 3, Ch. 72, L. 1913; Sec. 14, Ch. 3, Ch. 141, L. 1915; Sec. 13,

Ch. 3, Ch. 172, L. 1917), relating to records of county commissioners relating to roads, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2805.

32-317. Designation of emergency area near construction project. A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

History: En. Sec. 1, Ch. 118, L. 1963.

Title of Act

An act authorizing a board of county commissioners to designate a portion of a county or state secondary road as emer-

gency area if increased traffic due to a construction project threatens public safety; and prohibiting the running of livestock across the emergency area unless in transit under herd in the custody of an attendant; providing an effective date.

32-318. Notice of designation of emergency area—removal of designation. Notice of such designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for such designation. The board shall post the area or roads affected with adequate signs. The board shall remove the emergency designation within thirty days after the cessation of the increased traffic.

History: En. Sec. 2, Ch. 118, L. 1963.

32-319. Livestock not to run at large in emergency area. A person who owns or has custody of livestock shall not permit the livestock to run upon the emergency area unless the livestock are under herd in transit across the emergency area in the custody of an attendant.

History: En. Sec. 3, Ch. 118, L. 1963.

32-320. Impounding of animals at large—notice to owner—fees and mileage. A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector or deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector and the usual inspection fees and mileage shall be paid by the owner of such livestock.

History: En. Sec. 4, Ch. 118, L. 1963.

32-321. Penalty for violations. A person violating this act is guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars (\$10.00) or more than fifty dollars (\$50.00) for each violation.

History: En. Sec. 5, Ch. 118, L. 1963.

Effective Date

Section 6 of Ch. 118, Laws 1963 pro-

vided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 4—ESTABLISHING, ALTERING AND VACATING PUBLIC HIGHWAYS

32-401 to 32-413. (1635 to 1647) Repealed.

Repeal

These sections (Secs. 2750, 2751, 2760 to 2763, 2765 to 2768, Pol. C. 1895; Secs. 55, 56, 65 to 68, 70, 72, 73, pages 35, 38, 39, L. 1901; Secs. 54, 55, 63 to 66, 68 to 71, Ch. 44, L. 1903; Secs. 1 to 16, Ch. 4, Ch. 72, L. 1913; Secs. 1 to 16, Ch. 4, Ch. 141, L. 1915; Secs. 1 to 13, Ch. 4, Ch. 172,

L. 1917; Secs. 1, 2, Ch. 4, Ex. L. 1919; Sec. 1, Ch. 107, L. 1935; Sec. 1, Ch. 123, L. 1961), relating to the establishment, alteration and discontinuance of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-4002 to 32-4013.

32-415, 32-416. (1649, 1650) Repealed.**Repeal**

These sections (Secs. 2770, 2771, Pol. C. 1895; Secs. 75, 76, p. 40, L. 1901; Secs. 73, 74, Ch. 44, L. 1903; Secs. 18, 19, Ch. 4, Ch. 72, L. 1913; Secs. 18, 19, Ch. 4, Ch. 141, L. 1915; Secs. 15, 16, Ch. 4, Ch. 172,

L. 1917), relating to the laying out and changing of highways along section or subdivision lines, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4009.

CHAPTER 5—LOCAL IMPROVEMENT DISTRICTS

32-501 to 32-507. (1676 to 1682) Repealed.**Repeal**

These sections (Secs. 1 to 7, Ch. 12, Ch. 172, L. 1917), relating to construction and improvement of highways through assess-

ment districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3101 to 32-3107 and 32-3110.

32-509 to 32-526. (1684 to 1701) Repealed.**Repeal**

These sections (Secs. 9 to 26, Ch. 12, Ch. 172, L. 1917; Sec. 1, Ch. 13, L. 1925), relating to construction and improvement of highways through local improvement

districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3108 to 32-3131.

CHAPTER 6—SPECIAL ROAD DISTRICTS, ABOLISHMENT

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-601, 32-602. Repealed.**Repeal**

These sections (Secs. 1, 3, Ch. 35, L. 1939), abolishing special road districts,

were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 7—PUBLIC BRIDGES

32-701 to 32-711. (1703 to 1713) Repealed.**Repeal**

These sections (Secs. 2810 to 2814, Pol. C. 1895; Secs. 75 to 79, Ch. 44, L. 1903; Sec. 1, Ch. 9, L. 1909; Secs. 1 to 5, Ch. 5, Ch. 72, L. 1913; Secs. 1 to 5, Ch. 5, Ch. 141, L. 1915; Secs. 1 to 6, Ch. 63, L. 1917; Sec. 1, Ch. 144, L. 1931; Sec. 1,

Ch. 144, L. 1947; Sec. 1, Ch. 25, L. 1951; Sec. 1, Ch. 172, L. 1963), relating to the construction and maintenance of public bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2901 to 32-2907 and 32-3602 to 32-3604.

32-713 to 32-715. Repealed.**Repeal**

These sections (Secs. 1 to 3, Ch. 106, L. 1955; Secs. 1, 2, Ch. 35, L. 1957), relating to state construction and reconstruction

of bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2604.

32-716. Deduction of allotment from future regular apportionments, etc.**Compiler's Notes**

Section 84-1817, referred to in this sec-

tion in the parent volume, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

CHAPTER 9—CORRUGATED IRON CULVERTS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-901 to 32-905. (1721 to 1725) Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 143, L. 1919), relating to corrugated iron cul-

verts used in road construction, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 10—OBSTRUCTIONS AND ENCROACHMENTS

Section 32-1021. Flagmen escorts—prohibitions against nighttime herding on public highways.

32-1022. Violations.

32-1002 to 32-1017. (1727 to 1741.1) Repealed.

Repeal

These sections (Sec. 2734, Pol. C. 1895; Secs. 50, 90, Ch. 44, L. 1903; Secs. 14 to 16, Ch. 6, Ch. 72, L. 1913; Secs. 2 to 16, Ch. 6, Ch. 141, L. 1915; Sec. 1, Ch. 74, L. 1929; Sec. 1, Ch. 237, L. 1959; Sec. 1,

Ch. 176, L. 1965), relating to encroachments and obstructions on highways, were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-21-111, 32-4402 to 32-4410.

32-1018. Grazing livestock on highway unlawful.

Civil Liability for Violation

Motorist injured when car struck cattle on public highway could not prove violation of statute and obtain judgment in his favor in absence of evidence that owner

had willfully permitted livestock to be on highway and in absence of evidence that highway device had been installed to exclude livestock. *Jenkins v. Valley Garden Ranch, Inc.*, 151 M 463, 443 P 2d 753.

32-1021. Flagmen escorts—prohibitions against nighttime herding on public highways. Any person who owns, controls or is entitled to possession of any livestock shall not herd or drive a herd of livestock in excess of the number of ten (10) on any interstate or state primary highways as defined by the state highway commission in the state unless the livestock shall be preceded and followed by flagmen escorts for the purpose of warning other highway users. Livestock shall not be herded or driven on any interstate or state primary highways during nighttime as defined in section 90-406, R.C.M. 1947, except in a case of emergency. During the hours of darkness the flagmen escorts will use adequate warning lights such as, but not limited to, portable lamps, lanterns, or rotating beacons. This provision shall not apply during daytime at posted livestock crossings on highways.

History: En. Sec. 1, Ch. 90, L. 1967.

Title of Act

An act requiring flagmen escorts preceding and following livestock herded on

interstate or state primary highways and prohibiting herding livestock on said highways during nighttime; and providing exceptions.

32-1022. Violations. Any person violating the terms of this act shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 90, L. 1967.

CHAPTER 11—SPEED AND TRAFFIC REGULATIONS

- Section 32-1122. Regulation of size and weight of vehicles on public highways.
 32-1123. Standards of maximum dimensions, weights, etc.
 32-1126. Officers may weigh vehicles and require removal of excessive loads
 —badges and uniforms of highway employees.
 32-1127. Permits for excess size and weight.
 32-1131. Speed and traffic regulations—disposition of fines.

32-1113. (1748.1) Owner or operator of vehicle released, etc.**Intoxicated Driver**

Question was for jury whether passenger injured in accident had assumed risk of going into car driven by man who had had several drinks or whether driver was grossly negligent; passenger has burden of showing that driver was grossly negligent which is defined as "failure to use slight care." *Heen v. Tiddy*, 151 M 265, 442 P 2d 434.

Jury Question

The question of gross negligence was properly submitted to the jury on evidence that defendant approached a known 90-degree turn at a speed of 35 to 40 miles per hour on a rough road despite warn-

ings from the plaintiff guest and another passenger to slow down. *Carter v. Miller*, 140 M 426, 372 P 2d 421, 425.

The question of whether the action of a second defendant is an independent intervening cause in one for the jury and their finding will not be disturbed when there is substantial evidence to support it. *Holland v. Konds*, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

Pleading of Negligence

A general allegation of negligence in the complaint is sufficient to raise the issue of gross negligence. *Carter v. Miller*, 140 M 426, 372 P 2d 421, 424.

32-1115. (1748.3) Imputation of ordinary negligence to guest.**References**

Holland v. Konda, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

32-1122. (1751.1) Regulation of size and weight of vehicles on public highways. It shall be unlawful and constitute a misdemeanor for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any public highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this act, or any vehicle or vehicles which are not so constructed or equipped as required in this act or the rules and regulations of the state highway commission, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations or substitute any other limitations or requirements except as express authority may be granted in this act. Provided, however, that the operator of a vehicle which has been loaded at a location where no scale exists can move said vehicle over the public highways to the first open state scale without incurring the penalties provided by section 32-1125, R. C. M. 1947. The origin of movement must be at such distance from a scale that the operator could not have been reasonably expected to check the weight of said vehicle during the loading thereof and the operator must exhibit shipping papers or other written evidence of the location at which the vehicle was loaded. The vehicle must proceed toward its destination over the most direct highway route and stop at the first open state scale, permanent or portable. The load must be adjusted or reduced to

conform to existing limitations upon size and weight of vehicles before said vehicle shall be moved from the point of weighing.

History: En. Sec. 1, Ch. 171, L. 1931; Amendments
amd. Sec. 1, Ch. 123, L. 1947; amd. Sec. 1, The 1969 amendment added the proviso.
Ch. 188, L. 1969.

32-1123. Standards of maximum dimensions, weights, etc. The following standards are hereby made applicable to and shall govern the maximum dimensions and weights of motor vehicles, and other characteristics and factors thereof, operating over the highways of and in the state of Montana, to the exclusion of any other standards or any other requirements respecting the subject matter:

(1) Definitions. For the purpose of this act, the following definitions shall apply:

- (a) Vehicle—as defined in section 32-2102, R.C.M. 1947.
- (b) Motor Vehicle—as defined in section 32-2102, R.C.M. 1947.
- (c) Truck-Tractor—as defined in section 32-2103, R.C.M. 1947.
- (d) Truck—as defined in section 32-2104, R.C.M. 1947.
- (e) Trailer—as defined in section 32-2105, R.C.M. 1947.
- (f) Semitrailer—as defined in section 32-2105, R.C.M. 1947.
- (g) Dolly or converter gear—a device consisting of one (1) or two

(2) axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a full trailer as defined in section 32-2105, R.C.M. 1947.

(2) Width—No vehicle, unladen or with load, shall have a total outside width in excess of ninety-six (96) inches, except buses which may have a total outside width not to exceed one hundred two (102) inches, and such bus width shall be allowed only on paved highways twenty (20) feet or more in width; provided, however, that this restriction does not apply to implements of husbandry moved or propelled upon the highway during daylight hours for a distance of not more than fifty (50) miles, if the movement is incidental to the farming operations of the owner of the implement of husbandry; provided, further, that with respect to such implements of husbandry having a width in excess of twelve (12) feet, it shall be preceded and followed by flagmen escorts for the purpose of warning other highway users.

(3) Height—No vehicle, unladen or with load, shall exceed a height of thirteen (13) feet, six (6) inches.

(4) Length—(a) No single truck, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of thirty-five (35) feet.

(b) No single bus, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(c) No combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full trailer, or tractor-semitrailer-semitrailer converted to a full trailer by use of a dolly equipped with a fifth wheel, shall have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet, provided that when the combination consists of more than two (2) units the rear units of such combination shall be equipped with breakaway brakes.

(d) No motor vehicle shall tow more than one (1) motor vehicle and no motor vehicle shall draw more than two (2) motor vehicles attached thereto by the dual saddlemount method, that is by mounting the front wheels of one (1) vehicle on the bed of another leaving the rear wheels only of such vehicle in contact with the roadway, nor shall such combination have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(e) No passenger vehicle or truck of less than two thousand (2,000) pounds "manufacturers' rated capacity" shall tow more than one (1) trailer or semitrailer, nor shall such combination have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(5) Permissible Loads—(a) No axle shall carry a load in excess of eighteen thousand (18,000) pounds. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(b) (i) The gross weight of any group of axles of any vehicle or combination of vehicles, when the distance between the first and last axles of any group of axles is eighteen (18) feet or less, and the gross weight of any vehicle when the distance between the first and last axles of all the axles of the vehicle is eighteen (18) feet or less, shall not exceed that set forth in the following table of weights:

Table of weights [Same as parent volume.]

(ii) The gross weight of any vehicle or combination of vehicles, where the distance between the first and last axles of the vehicle or combination of vehicles is more than eighteen (18) feet, shall not exceed that set forth in the following table of weights:

Table of weights [Same as parent volume.]

(c) The state highway commission may, based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation, authorize by special permit at a fee of ten dollars (\$10), specifying highway routings, the operation of vehicles having two (2) but not more than nine (9) axles for which the maximum single axle load shall be twenty thousand (20,000) pounds and all axles forty (40) inches or less apart shall be considered a single axle, and for which no two (2) consecutive axles more than forty (40) inches or less than ninety-six (96) inches apart shall carry a load in excess of thirty-four thousand (34,000) pounds. The maximum gross weight allowed on any vehicle or combination so authorized shall be determined by the formula $W \text{ equals } 500 (LN/N \text{ minus } 1 \text{ plus } 12N \text{ plus } 36)$ in which W equals gross weight, L equals wheel base in feet and N equals number of axles, provided that the maximum allowable gross weight on any group of axles shall not exceed the following values:

2 axles	40,000 pounds
3 axles	60,000 pounds
4 axles	80,000 pounds
5 axles	85,500 pounds

6 axles	90,000 pounds
7 axles	105,500 pounds
8 axles	105,500 pounds
9 axles	105,500 pounds

This subdivision shall have no application to highways which are a part of the national system of interstate and defense highways (as referred to in section 127 of title 23, United States Code) when such application would prevent this state from receiving any federal funds for highway purposes.

(d) The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half ($\frac{1}{2}$) foot, the next larger whole number shall be used.

(e) The maximum axle and axle group loads stated in paragraphs (a), (b)(i) and (b)(ii) of clause (5) above are subject to reasonable reduction in the discretion of the state highway commission during periods when road subgrades have been weakened by water saturation or other causes.

(f). * * * [Same as parent volume.]

(g) Nothing contained in this section shall be deemed to authorize, without a permit issued as provided by law, the operation of any combination of vehicles having any gross weight, axle load or size in excess of that authorized in this section, or the operation of any combination of vehicles on the national system of interstate and defense highways having any gross weight or size in excess of that permitted by operation of law in this state prior to July 1, 1956, or by federal law or regulation in excess thereof, which may be hereafter adopted. If federal law allows establishment of size and weight limits in excess of those permitted in this section, without penalty or denial of federal funds for highway purposes, the state highway commission may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a size or weight in excess of the limits provided for in this section, but within the limits necessary to qualify for federal aid highway funds.

History: En. Sec. 2, Ch. 123, L. 1947; amd. Sec. 1, Ch. 73, L. 1953; amd. Sec. 1, Ch. 250, L. 1955; amd. Sec. 1, Ch. 221, L. 1959; amd. Sec. 1, Ch. 243, L. 1961; amd. Sec. 1, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment added new subdivision (1); redesignated old subdivisions (1) through (4) as new subdivisions (2) through (5); substituted new subdivision (4)(c) for old subdivision (3)(c), which read, "No combinations of (1) truck-tractor and semitrailer, (2) truck and trailer, or other combination of vehicles, shall consist of more than two units except that, at the discretion of the state highway commission, they may permit combinations of vehicles of not more than three units consisting of (3) tractor-semitrailer-semitrailer converted to full trailer by use of a dolly equipped with fifth wheel which shall be considered a

part of the trailer for all purposes and not as a separate unit, or (4) tractor-semitrailer-full trailer, and no such combination of vehicles, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet, provided that when the combination consists of more than two (2) units the rear unit of such combination shall be equipped with breakaway brakes"; redesignated the first paragraph of subdivision (5)(b) as (i); redesignated old subdivision (4)(c) as new subdivision (5)(b)(ii); added new subdivision (5)(c); in new subdivision (5)(e), substituted "(b)(i) and (b)(ii) of clause (5)" for "(b) and (c) of clause (4)" before "above are subject"; and added new subdivision (5)(g).

Mandatory Nature of Penalty

Once court determined that defendant was driving logging truck upon highways

of state when gross weight exceeded maximum gross weight allowed by statute by some 28,000 pounds, court had no choice but to levy additional fine of \$1,000 under penalty section of chapter; penalty is in addition to the other penalties provided by statute, is obligatory upon judge, is not violation of double jeopardy provision

of constitution and does not violate statute providing that when action is punishable under different provisions of code, punishment may be had under only one of them. State ex rel. Oleson v. District Court, Eleventh Judicial Dist., 151 M 12, 438 P 2d 560.

32-1126. (1751.5) Officers may weigh vehicles and require removal of excessive loads—badges and uniforms of highway employees. Any peace officer, officer of the Montana highway patrol, or employees of the state highway commission are authorized and empowered to weigh any vehicle as provided in section 32-1123, R. C. M. 1947, either by means of portable or stationary scales, and may require that such vehicle be driven to the nearest scales in the event such scales are within two (2) miles. The peace officer, officer of the Montana highway patrol, or employees of the state highway commission may then require the driver to unload immediately such portion of the load as may be necessary to decrease the weight of such vehicle to conform to the maximum allowable weights specified in section 32-1123.

All commodities and material so unloaded as required by this section shall be cared for and removed from the highway right of way by the owner or operator of such vehicle at the risk of such owner or operator. Such removal shall be within such reasonable time as may be designated by the peace officer, officer of the highway patrol, or employees of the Montana state highway commission who has compelled such unloading.

The state highway commission is empowered to establish, maintain, and operate, either intermittently or on a continuous schedule, weigh stations and be empowered to require all vehicles, except passenger cars, and pickup trucks under eight thousand (8,000) pounds G.V.W. to enter for the purpose of weighing and inspection for compliance with all laws pertaining to the operation and safety requirements.

Employees of the state highway commission engaged in the enforcement of this act shall wear and prominently display an identification badge or device with the employee's name and title shown thereon. The state highway commission may in its discretion authorize uniform dress for state highway commission employees engaged in the enforcement of this act.

History: En. Sec. 5, Ch. 171, L. 1931; amd. Sec. 4, Ch. 184, L. 1939; amd. Sec. 4, Ch. 243, L. 1961; amd. Sec. 1, Ch. 321, L. 1971.

Amendments

The 1971 amendment deleted "having reason to believe that the weight of a

vehicle and load is unlawful" after "highway commission" near the beginning of the section; substituted "any vehicle as provided in section 32-1123, R. C. M. 1947" for "the same" near the middle of the first paragraph; and inserted the present third paragraph.

32-1127. (1751.6) Permits for excess size and weight. The state highway commission, and local authorities in their respective jurisdiction, may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing, authorizing the applicant

to operate or move a vehicle, combination of vehicles, load, object or any other thing of a size or weight exceeding the maximum specified in section 32-1123, R. C. M. 1947, or acts amendatory upon any highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible; provided, however, that only the state highway commission shall have the discretion to issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of nine (9) feet in width or exceeding the length, height, or weight specified in section 32-1123, R. C. M. 1947. Said permit shall be issued in the public interest; provided, however, that any carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. No permit shall be issued for a period of time greater than the license provided in Title 53 or Title 32, R. C. M. 1947, as amended, including grace periods allowed by said sections. Vehicles licensed in other jurisdictions may, at the discretion of the Montana state highway commission, purchase permits to expire with their registration, provided that any license required by the state of Montana shall govern the issuance of a special permit. The Montana state highway commission may issue oversize permits to dealers in implements of husbandry and self-propelled machinery which may be transferred from unit to unit by the dealer for the fees set forth in paragraph (b). Such permits issued to dealers in implements of husbandry and self-propelled machinery shall expire on December 31 of each year with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery shall be a resident of the state of Montana. A post-office box number shall not be a permanent address under this section.

The applicant for any special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or any other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or any other thing is to be moved and whether such permit is required for a single trip or for continuous operation. All fees collected under this act shall be forwarded to the state treasurer for deposit in the state highway general fund.

(a) Special permits—discretion of issuer—conditions. The state highway commission or local authority is authorized to issue or withhold such special permit at its discretion, or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or any other thing described may be operated on the public highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle, combination of vehicles, load, object, or any other thing when necessary to assure against damage to the road foundation, surfaces or structures or safety of traffic and may require such undertaking or other security as may be deemed necessary to compensate for injury to any roadway or road structure.

(b) Special Permits—Fees. The following fees, in addition to the regular license and gross vehicle weight fees, shall be paid for all move-

ments under special permits on the public highways under the jurisdiction of the state highway commission:

Six dollars (\$6) for each permit issued in excess of the size and weight specified in section 32-1123, R. C. M. 1947, and acts amendatory thereto; provided, however, that term or blanket permits shall not be issued for overwidth vehicles, combination of vehicles, load or any other thing in excess of fifteen (15) feet, overlength vehicles, combination of vehicles, load, object or any other thing in excess of eighty-five (85) feet, and overheight vehicles, combination of vehicles, load or any other thing in excess of thirteen and one-half ($13\frac{1}{2}$) feet or of a limit determined by the state highway commission. A vehicle, combination of vehicles, load, or any other thing in excess of these dimensions will be limited to trip permits.

(c) A self-propelled vehicle used only for the purpose of moving haystacks on a commercial basis is subject to the provisions of this section except as follows:

1. The vehicle, loaded or unloaded, shall not exceed fifty-five (55) feet in length nor twenty (20) feet in width.

2. No single load shall be moved on such vehicle a distance greater than seventy-five (75) miles from the point of origin on public roads.

3. When the vehicle is hauling a load it shall be accompanied by two (2) pilot cars. Each car shall be equipped with a flashing warning light, a red flag, and a sign with the words "wide load" written thereon. One (1) car shall precede the vehicle by not less than one hundred (100) yards nor more than one-quarter ($\frac{1}{4}$) mile and one (1) shall follow the vehicle at a distance not less than one hundred (100) yards nor more than one-quarter ($\frac{1}{4}$) mile. The following pilot car shall be in radio contact with the vehicle at all times.

4. The speed of the vehicle shall be reasonable and proper but not in excess of thirty-five (35) miles per hour.

5. The vehicle shall be operated only between the hours of sunrise and sunset.

6. The vehicle may not be operated on an interstate or controlled-access highway.

7. A term or blanket permit may be issued for the vehicle.

(d) A fee of six dollars (\$6) shall be paid for each overweight permit issued, provided no permit shall be issued for a period of time greater than the license provided in Title 53 or Title 32, R. C. M. 1947, as amended, including grace periods allowed by said sections. Vehicles licensed in other jurisdictions may, at the discretion of the Montana state highway commission, purchase permits to expire with their registration, provided that any license required by the state of Montana shall govern the issuance of a special permit. In addition to the permit fee, there shall be charged for single trip permits: five dollars (\$5) for distances to and including one hundred (100) miles; fifteen dollars (\$15) for distances from one hundred one (101) to one hundred ninety-nine (199) miles; and twenty-five dollars (\$25) for distances over two hundred (200) miles traveled, for such excess load over the gross allowable load specified in this section or the sum of the excess axle loads, whichever is greater.

(e) Permits issued to the United States government, states, counties, cities and their political subdivisions, shall be issued without fee for a term beginning with the date of issuance and expiring December 31.

(f) Special permits — misrepresentations and violations — penalty — display of permit. Any person who knowingly and willfully misrepresents the size of [or] weight of any vehicle, combination of vehicles, load, object or any other thing in obtaining a special permit or does not follow the requirements and conditions of the special permit or who operates any vehicle, combination of vehicles, load, object, or any other thing, the gross weight of which is in excess of the maximum for which such vehicle, combination of vehicles, load, object, or any other thing may be eligible for license, without first obtaining a special permit, is guilty of a misdemeanor.

Every special permit issued hereunder shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the Montana highway patrol, or employees of the state highway commission.

A peace officer, officer of the Montana highway patrol, or employees of the state highway commission who shall find any person operating a vehicle, combination of vehicles, load, object, or any other thing in violation of the conditions of a special permit issued hereunder may confiscate such permit and forward the same to the state highway commission which may return it to the permittee or revoke, cancel, or suspend it without refund. The state highway commission shall keep a record of all action taken upon permits so confiscated and if a permit shall be returned to the permittee, the action taken by the commission shall be endorsed thereon. Any permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after such hearing, may reinstate any permit or revise its previous action.

History: En. Sec. 6, Ch. 171, L. 1931; amd. Sec. 2, Ch. 147, L. 1933; amd. Sec. 5, Ch. 184, L. 1939; amd. Sec. 1, Ch. 254, L. 1955; amd. Sec. 5, Ch. 243, L. 1961; amd. Sec. 1, Ch. 225, L. 1965; amd. Sec. 1, Ch. 83, L. 1969; amd. Sec. 1, Ch. 334, L. 1971.

Amendments

The 1965 amendment substituted "shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle or load" for "shall specifically describe the vehicle or vehicles and load" after "The applicant for any special permit" at the beginning of the second paragraph; and substituted "over which the vehicle or load is to be moved" for "for which to operate is requested" after "particular state highways" in the first sentence of the second paragraph.

The 1969 amendment substituted "time greater * * * said sections" for "more than nine (9) months" in the second sentence of the first paragraph and added

the remaining sentences to that paragraph and, in subsection (b), increased special permit fees from \$3.00 to \$6.00 in the second paragraph, inserted "A fee of six dollars * * * special permit" in the third paragraph, and, immediately following, substituted "In addition to the permit fee" for "In addition to the three dollar (\$3.00) fee specified herein for overweight permits."

The 1971 amendment inserted "combination of vehicles, load, object, or any other thing" wherever appearing throughout the section; substituted references to section 32-1123 for "this act" in three instances; inserted "or combination of vehicles" in the first proviso to the first sentence of the first paragraph; increased the maximum length specified in the proviso to the first sentence of the second paragraph of subdivision (b) from 70 to 85 feet; inserted "thirteen and one-half (13½) feet or of" in the proviso to the first sentence of the second paragraph of subdivision (b); inserted a new subdivi-

sion (c); redesignated the former third paragraph of subdivision (b) as subdivision (d); inserted a new subdivision (e); redesignated former subdivision (c) as subdivision (f); and made numerous changes in phraseology, style and punctuation.

Effective Date

Section 2 of Ch. 225, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

32-1131. (1752) Speed and traffic regulations—disposition of fines. Any and all fines collected for the violation of any of the provisions of this act shall belong to the general road fund of the county, and shall, immediately after their collection, be paid over by the court or magistrate collecting the same to the county treasurer for the use and benefit of that fund, except for that portion of the fines, as provided for in section 4 [75-5304] of this act, which the county treasurer shall transmit to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 10, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 10, Ch. 141, L. 1915; re-en. Sec. 1752, R. C. M. 1921; amd. Sec. 12, Ch. 226, L. 1965; amd. Sec. 11, Ch. 214, L. 1969.

Amendments

The 1965 amendment added the exception at the end of the section commencing with "except the penalty."

Separability Clause

Section 13 of Ch. 226, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

The 1969 amendment substituted "for that portion of the fines" for "the penalty assessments levied and paid."

Repealing Clause

Section 12 of Ch. 214, Laws 1969 read "Sections 75-5301 through 75-5309, R. C. M. 1947, are repealed."

Effective Dates

Section 14 of Ch. 226, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

Section 13 of Ch. 214, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

32-1143 to 32-1145. Repealed.

Repeal

Sections 32-1143 to 32-1145 (Secs. 1 to 3, Ch. 7, L. 1941), relating to use of white canes by the blind, were repealed by Sec.

7, Ch. 181, Laws 1971. For similar provisions in current law, see secs. 71-1303 to 71-1308.

CHAPTER 12—UNIFORM ACCIDENT REPORTING ACT

Section 32-1208. Written reports of accidents, additional information, form of report.

32-1202. Accidents involving death or personal injuries.

References

Parini v. Lanch, 148 M 188, 418 P 2d 861, 864.

32-1208. Written reports of accidents, additional information, form of report. (a) The operator of any motor vehicle which is in any manner involved in an accident within this state, in which any person is killed or

injured or in which damage to the property of any one person in excess of two hundred and fifty dollars (\$250) is sustained, shall within ten (10) days after such accident report the matter in writing to the supervisor.

(b) and (c) * * * [Same as parent volume.]

(d) Form of report. The form of accident report required under section 32-1208, shall contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in this act.

History: En. Sec. 9, Ch. 210, L. 1939; amd. Sec. 5, Ch. 256, L. 1959; amd. Sec. 1, Ch. 52, L. 1971.

Amendments

The 1971 amendment revised and reworded subsection (a) to raise the mini-

mum damage requiring a report from \$100 to \$250, and to apply the amount to damage sustained by any one person rather than to total damage; and substituted "exemptions" for "exceptions" at the end of subsection (d).

32-1213. Accident reports confidential.

Inadmissibility in Evidence

In negligence action by driver of automobile against city and driver of city road grader with whom he collided, accident report filed by city driver with Butte city police department was privileged, confi-

dential and inadmissible and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. *Morrison v. City of Butte*, 150 M 106, 431 P 2d 79.

32-1215. Any incorporated city may require accident reports.

Inadmissibility in Evidence

In negligence action by driver of automobile against city and driver of city road grader with whom he collided, accident report filed by city driver with Butte city police department was privileged, confi-

dential and inadmissible and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. *Morrison v. City of Butte*, 150 M 106, 431 P 2d 79.

CHAPTER 13—GOOD ROADS DAY

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1301. (1764) Repealed.

Repeal

This section (Sec. 1, Ch. 20, L. 1915), relating to good roads day, was repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4401.

CHAPTER 16—STATE HIGHWAY COMMISSION AND HIGHWAY ENGINEER—POWERS AND DUTIES

- Section 32-1619. Disposition of state highway moneys.
 32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs.
 32-1628. Bypassing of municipalities—consent of municipal governing body.
 32-1632. Appointment of employees as peace officers.
 32-1633. Training of highway commission peace officers—rules and regulations.
 32-1634. Training required before arrests authorized.
 32-1635. Official attire required for making arrests and carrying firearms.
 32-1636. Power to inspect vehicle registration, receipts and other documents.
 32-1637. Identification badge and uniform.
 32-1638. Definition of public highways.

- 32-1639. Offenses for which arrest authorized.
 32-1640. Co-operation with other agencies.
 32-1641. Duty of authorized employee upon making an arrest—power to fix and accept bail—fees of justices of peace.

32-1601 to 32-1618. (1783 to 1798) Repealed.

Repeal

These sections (Secs. 1 to 16, Ch. 10, Ex. L. 1921; Sec. 1, Ch. 129, L. 1925; Secs. 1, 2, Ch. 92, L. 1939; Sec. 1, Ch. 111, L. 1941; Secs. 1 to 6, Ch. 86, L. 1945; Sec. 1, Ch. 155, L. 1945; Sec. 1, Ch. 117, L. 1953; Sec. 1, Ch. 118, L. 1953; Sec. 1, Ch. 91, L. 1955; Sec. 1, Ch. 43, L. 1957; Sec. 1, Ch. 98, L. 1959; Sec. 1, Ch. 210, L. 1959; Sec. 1, Ch. 124, L. 1961; Sec. 1, Ch. 180, L. 1961; Sec. 1, Ch. 182, L. 1961;

Sec. 1, Ch. 222, L. 1961; Sec. 1, Ch. 91, L. 1963; Secs. 1, 2, Ch. 143, L. 1963; Sec. 1, Ch. 125, L. 1965; Secs. 17, 18, Ch. 177, L. 1965), relating to the powers and the duties of the state highway commission and the highway engineer, were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2401 to 32-2413, 32-2418, 32-2501 to 32-2503, 32-3902 to 32-3916, 32-4016, 32-4101 to 32-4103.

32-1619. (1799) Disposition of state highway moneys. All moneys received for the use and purpose of the state highway commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the state highway commission. Any reference to the state highway fund in this code shall be taken to mean the state highway account in the earmarked revenue fund. All moneys received from the counties, and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the state highway commission. Hereafter all moneys collected for the state highway commission as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 17, Ch. 10, Ex. L. 1921; re-en. Sec. 1799, R. C. M. 1921; amd. Sec. 212, Ch. 147, L. 1963.

Amendment

The 1963 amendment substantially re-wrote this section. For previous text, see parent volume.

32-1620. (1800) Repealed.

Repeal

This section (Sec. 18, Ch. 10, Ex. L. 1921; Sec. 7, Ch. 86, L. 1945; Sec. 18, Ch. 97, L. 1961), relating to claims against

the state highway commission, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2417.

32-1622 to 32-1626. Repealed.

Repeal

These sections (Sec. 1, Ch. 15, L. 1955; Secs. 1, 2, Ch. 30, L. 1955; Sec. 1, Ch. 254, L. 1957; Sec. 1, Ch. 204, L. 1961; Sec. 1, Ch. 219, L. 1963), relating to state

and federal aid highways were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2302, 32-2411 and 32-2414 to 32-2416.

32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs. (1) Except as provided in subsection (2) of this section, the state highway commission shall pay the entire costs of construction and maintenance of streets and highways which:

- (a) Are state highway routes; and
- (b) Are within municipalities incorporated prior to January 1, 1965.

(2) An incorporated municipality shall pay one-half ($\frac{1}{2}$) of the state's share of the cost of curbs and gutters along such streets and highways.

History: En. Sec. 1, Ch. 210, L. 1965.

maintenance of certain streets and highways in or near incorporated municipalities.

Title of Act

An act relating to construction and

32-1628. Bypassing of municipalities—consent of municipal governing body. (1) The highway commission shall not construct highway bypasses or highway relocation projects without prior consent of the governing body of an incorporated municipality when the bypasses or projects:

(a) Are not part of the national system of interstate highways built under the national defense highway act; and

(b) Divert motor vehicles from an existing highway route through a municipality incorporated prior to January 1, 1965.

(2) The highway commission shall notify the governing body of such municipality by certified mail that they propose to bypass the municipality. No contract shall be let nor work commenced until the governing body notifies the commission of its consent, or until the elapse of sixty (60) days after the notice has been sent by the highway commission to such municipality, whichever first occurs. The failure of such municipality to act and notify the highway commission of its action within such sixty (60) day period shall constitute implied consent to the bypass.

(3) Actual consent or refusal to bypass shall be in the form of a resolution, duly adopted by a majority of the members of the governing body of the municipality.

(4) The governing body may not withdraw consent once the highway commission has been notified of such consent.

(5) Nothing contained in this act shall in any way modify the provisions of section 32-1625, R. C. M. 1947.

History: En. Sec. 2, Ch. 210, L. 1965.

Compiler's Notes

Section 32-1625, referred to in subsection (5) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

Effective Date

Section 3 of Ch. 210, Laws, 1965 provided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

Retrospective Application

Statute would not be enforced in favor of nonconsenting municipality where state highway commission had acquired rights and obligations and begun construction of the bypass before its enactment and enactment did not disclose legislative intent to apply retroactively. *City of Harlem v. State Highway Commission*, 149 M 281, 425 P 2d 718.

32-1629, 32-1629.1 to 32-1631. Repealed.

Repeal

Sections 32-1629, 32-1629.1 to 32-1631 (Secs. 1 to 3, Ch. 128, L. 1965; Secs. 1, 2, Ch. 309, L. 1967) relating to littering on

highway, were repealed by Sec. 12, Ch. 323, Laws 1971. For similar provisions in current law, see secs. 94-3335 to 94-3344.

32-1632. Appointment of employees as peace officers. The state highway commission is hereby empowered to appoint employees as peace offi-

cers to carry out the provisions expressly set forth in this act. Such employees so selected shall include only the gross vehicle weight division supervisor, scale supervisor, and scalemen. Each employee so appointed shall be issued a certificate of appointment and execute an oath of office which shall be entered into the records of the commission.

History: En. Sec. 1, Ch. 242, L. 1971. file complaints, and providing for co-operation with other peace officers.

Title of Act

An act authorizing the highway commission to grant certain employees of the state highway commission the power of arrest in specified instances, providing for rules and regulations, establishing qualifications to accept bail, issue summons,

Cross-References

Arrest by a peace officer, sec. 95-608.
Definition of peace officer, sec. 95-210.
Offenses by peace officers, secs. 94-3915 to 94-3919.

32-1633. Training of highway commission peace officers—rules and regulations. The highway commission shall provide such training as required to qualify said employees to competently perform their duties under this act and shall establish such rules and regulations as are required and necessary for qualification of said employees as peace officers.

History: En. Sec. 2, Ch. 242, L. 1971.

32-1634. Training required before arrests authorized. No employee shall be authorized to make arrests until he has successfully completed such training as required by the highway commission.

History: En. Sec. 3, Ch. 242, L. 1971.

32-1635. Official attire required for making arrests and carrying firearms. Qualified employees shall have authority to make arrests throughout the state of Montana only when dressed in official uniform and displaying the official badge authorized by the highway commission. Authorized employees may not carry firearms unless officially attired.

History: En. Sec. 4, Ch. 242, L. 1971.

32-1636. Power to inspect vehicle registration, receipts and other documents. Employees of the state highway commission designated under this act shall be empowered when officially dressed to make reasonable inspection of vehicle registration receipts, state highway commission receipts and registrations, special permits, and such other documents as may be required to be carried in or for a vehicle traveling on the public highways of Montana.

History: En. Sec. 5, Ch. 242, L. 1971.

32-1637. Identification badge and uniform. Employees of the state highway commission engaged in the enforcement of this act shall wear and prominently display an identification badge or device with the employee's name and title shown thereon. The state highway commission may in its discretion authorize uniform dress for state highway commission employees engaged in the enforcement of this act.

History: En. Sec. 6, Ch. 242, L. 1971.

32-1638. Definition of public highways. The term "public highways" are highways as defined in section 32-2114, R. C. M. 1947, amended.

History: En. Sec. 7, Ch. 242, L. 1971.

32-1639. Offenses for which arrest authorized. Authorized employees of the state highway commission shall have authority to make arrests for violations of the following statutory provisions only:

- (1) Section 32-1122 through section 32-1130, R. C. M. 1947, amended.
- (2) Section 32-3201 through section 32-3203, R. C. M. 1947, amended.
- (3) Section 32-3301 through section 32-3316, R. C. M. 1947, amended.
- (4) Section 32-3401 through section 32-3406, R. C. M. 1947, amended.
- (5) Section 53-118.1 through section 53-118.4, R. C. M. 1947, amended.
- (6) Section 53-119.1, R. C. M. 1947, amended.
- (7) Section 84-1833, R. C. M. 1947, amended.
- (8) Section 84-1841 through section 84-1844, R. C. M. 1947, amended.
- (9) Section 84-6601 through section 84-6605, R. C. M. 1947, amended.

Said employees shall have no authority of arrest other than herein specified.

History: En. Sec. 8, Ch. 242, L. 1971.

Compiler's Notes

Sections 53-118.1 to 53-118.4, referred

to in subdivision (5) of this section, were repealed by Sec. 6, Ch. 209, Laws of 1971. For similar provisions in current law, see sections 53-118.6 to 53-118.10.

32-1640. Co-operation with other agencies. The employees of the state highway commission shall co-operate with other law enforcement agencies.

History: En. Sec. 9, Ch. 242, L. 1971.

32-1641. Duty of authorized employee upon making an arrest—power to fix and accept bail—fees of justices of peace. Authorized employees, upon making an arrest, shall deliver to the offender a form of summons describing the nature of the offense with instructions thereon for the offender to report to the nearest justice of the peace, the authorized employee has the right to accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the summons. In the event the authorized employee accepts bail, he shall give a signed receipt to the offender setting forth the amount received. The authorized employee shall then deliver the bail money to the justice of the peace before whom the offender is to appear, the justice of the peace shall give a receipt to the authorized employee for the amount of bail money delivered. After filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set, fix and accept further appearance bail bond.

For the purpose of this act only, the fees of justices of the peace in all offenses in which the statutory fine is five dollars (\$5) or less, shall be one dollar (\$1), but if the statutory fine is in excess of five dollars (\$5), the justices of the peace shall be permitted the fee now prescribed by law;

provided that no additional fees shall be paid justices of the peace where salaries are fixed by law.

History: En. Sec. 10, Ch. 242, L. 1971.

CHAPTER 18—STOCK LANE LAW

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1801 to 32-1804. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 63, L. 1939), the Stock Lane Law, were repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4015.

CHAPTER 19—MONTANA TOLL BRIDGE AUTHORITY

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

32-1901 to 32-1915. Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 31, L. 1953; Sec. 11-117, Ch. 264, L. 1963), relating to toll bridges, were repealed by

Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2701 to 32-2716, 32-3501 to 32-3509, and 32-3919.

CHAPTER 20—CONTROLLED ACCESS HIGHWAYS

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

32-2001 to 32-2010. Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 104, L. 1955; Secs. 1 to 3, Ch. 121, L. 1957; Sec. 1, Ch. 134, L. 1959; Secs. 1 to 9, Ch. 156, L. 1963; Sec. 2, Ch. 90, L. 1965), relating to controlled access highways, were

repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3920, 32-4018, and 32-4301 to 32-4311. Sec. 1, Ch. 90, L. 1965 which was inadvertently classified as section 32-2008.1 has been transferred to section 32-4308.1.

CHAPTER 21—UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

Section 32-2124.3.	Forest development road, special service road defined.
32-2124.4.	State laws applicable on forest development roads—enforcement.
32-2124.5.	Special service roads not subject to state law enforcement.
32-2134.1.	Injury to or removal of sign or marker as misdemeanor—penalty.
32-2134.2.	Reward for information on injury to or removal of sign or marker.
32-2134.3.	Posting of act along highways.
32-2137.	Traffic-control signal legend.
32-2142.	Persons under the influence of intoxicating liquor or of drugs.
32-2142.1.	Chemical blood, breath, or urine tests.
32-2142.2.	Right of appeal to court.
32-2142.3.	Administration of tests.
32-2143.1.	Permission of authorities to hold speed contest.
32-2143.2.	Penalty for unauthorized drag racing.
32-2144.	Speed restrictions—basic rule.
32-2146.	When local authorities may and shall alter limits.
32-2148.	Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers.
32-2170.	Vehicle approaching or entering intersection.
32-2173.	Vehicle entering highway from private road, driveway or public approach ramp.

- 32-2174. Vehicles approaching "Yield" sign.
- 32-2177. Pedestrians' right of way in crosswalk.
- 32-2197. Overtaking and passing school bus.
- 32-2198. Special lighting equipment on school buses.
- 32-21-105. Riding on motorcycles.
- 32-21-130. Lamps on other vehicles and equipment—emblem to be used on certain slow-moving vehicles—slow-moving vehicles to permit overtaking vehicles to pass.
- 32-21-132. Audible and visual signals on vehicles.
- 32-21-143.1. Brake equipment required.
- 32-21-143.2. Performance ability of brakes.
- 32-21-143.3. Maintenance of brakes.
- 32-21-143.4. Hydraulic brake fluid.
- 32-21-149. Restrictions as to tire equipment.
- 32-21-149.1. Fenders, splash aprons or flaps required on certain vehicles—dimension and location—violation a misdemeanor—penalty
- 32-21-150.1. Seat belts required in new vehicles.
- 32-21-150.2. Specifications for seat belts.
- 32-21-150.3. Penalty for seat belt violations.
- 32-21-155.1. Annual inspection of school buses.
- 32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when.
- 32-21-164. Summons—issuing to child under eighteen.
- 32-21-166. Vehicle equipment safety compact—text.
- 32-21-167. Legislative findings on equipment safety.
- 32-21-168. Equipment requirements continued in force.
- 32-21-169. State commissioner on vehicle equipment safety commission.
- 32-21-170. Retirement of equipment safety commission employees.
- 32-21-171. Governmental agencies to co-operate with equipment safety commission.
- 32-21-172. Documents filed and notices given by equipment safety commission.
- 32-21-173. Equipment safety commission budgets.
- 32-21-174. Equipment safety commission accounts.
- 32-21-175. Governor as executive head for compact purposes.

32-2114. Street or highway—private road or driveway—roadway, etc.

References

Faucette v. Christensen, 145 M 28, 400
P 2d 883.

32-2115. Intersection.

Nature of Roads Forming Intersection

An intersection is formed when two publicly maintained ways join at any angle. Rader v. Nicholls, 140 M 459, 373
P 2d 312, 313.

References

Faucette v. Christensen, 145 M 28, 400
P 2d 883.

32-2124.3. Forest development road, special service road defined. For the purpose of this act a "forest development road" is defined as a road located on national forest lands or on a right of way acquired by the United States and used for the protection, administration and utilization of the national forests and other lands administered by the United States forest service; and a "special service road" is defined as a forest development road or segment thereof, the right of way for which is controlled by the United States and which is not a part of the highway system of the state or of a county or other public road authority of this state, designated by the forest service, pursuant to the regulations of the secretary of the United States department of agriculture, as a special

service road for the purpose of controlling and regulating its use to accomplish the purposes of the secretary of agriculture's regulations applicable to the administration of the forest development transport system.

History: En. Sec. 1, Ch. 139, L. 1971.

Title of Act

An act to make Montana traffic laws applicable to forest development roads except as additional or conflicting rules

may be designated by the United States forest service for portions thereof designated as special service roads, and to confer law enforcement jurisdiction upon the Montana highway patrol and sheriffs of this state to enforce the traffic laws.

32-2124.4. State laws applicable on forest development roads—enforcement. Forest development roads in the state of Montana, whether or not they meet the definition of a public highway by the laws of this state, are subject to the traffic laws of this state and the Montana highway patrol and county sheriffs of this state shall have jurisdiction thereon to investigate accidents and enforce the Montana traffic laws.

History: En. Sec. 2, Ch. 139, L. 1971.

32-2124.5. Special service roads not subject to state law enforcement. When forest development roads, or segments thereof, are designated as special service roads by the United States forest service and by such designation are subjected to traffic rules in addition to or in conflict with the Montana traffic laws, neither the additional nor conflicting traffic rules so prescribed by the forest service nor the Montana traffic law with which they conflict shall be within the jurisdiction of law enforcement officers of this state as to such special service road.

History: En. Sec. 3, Ch. 139, L. 1971.

32-2133. State highway commission to adopt sign manual.

Lack of Uniformity

Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2156, which prohibits driving to the left of the center line 100 feet from intersection, it was not error on the judge's part to refuse to instruct jury on the latter section. *Graveley v. Springer*, 145 M 486, 402 P 2d 41.

Manual as Evidence

In action for wrongful death of driver of state highway truck killed while sand-

ing road in snowstorm, it was error to admit into evidence Manual on Uniform Traffic Control Devices adopted by highway commission where manual required that appropriate signs be erected warning public of road work but did not specifically designate who was to erect them. *Williams v. Maley*, 150 M 261, 434 P 2d 398.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2134. State highway commission to sign all state highways.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2134.1. Injury to or removal of sign or marker as misdemeanor—penalty. Every person who maliciously injures, defaces, damages or removes any sign, signal or marker, either temporarily or permanently erected on the right of way of any secondary, state or interstate highway

for warning, instruction or information of the public, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of two hundred fifty dollars (\$250) or by imprisonment in the county jail for a period not exceeding sixty (60) days, or both such fine and imprisonment in the discretion of the court. This act applies to secondary, state or interstate highways which are completed and to secondary, state or interstate highways which are under construction or repair.

History: En. Sec. 1, Ch. 184, L. 1965.

Title of Act

An act making it unlawful to damage, deface or remove any sign, signal or

marker erected on the right of way of any secondary, state or interstate highway; requiring the state highway commission to post notices hereof; providing for a penalty, reward and a repealing clause.

32-2134.2. Reward for information on injury to or removal of sign or marker. Upon conviction under the provisions of this act, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state highway account in the earmarked revenue fund in the sum of one hundred dollars (\$100).

History: En. Sec. 2, Ch. 184, L. 1965.

32-2134.3. Posting of act along highways. It is the duty of the state highway commission to post notices of this act, and the penalties provided for, at locations to be designated by the state highway commission.

History: En. Sec. 3, Ch. 184, L. 1965.

all acts and parts of acts in conflict therewith.

Repealing Clause

Section 4 of Ch. 184, Laws 1965 repealed

32-2136. Obedience to and required traffic-control devices.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2137. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) to (d). * * * [Same as parent volume.]

(e) Red with Traffic Sign Legend—Right Turn on Red After Stop:

1. Vehicular traffic facing such signal and legend shall stop and then may cautiously enter the intersection only to make the turn indicated by the legend but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

2. No pedestrian facing such signal and legend shall enter the roadway until the green or "Go" is shown alone.

(f) Traffic Control Signal at Place Other Than Intersection:

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section

shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

History: En. Sec. 34, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 211, L. 1963.

Amendment

The 1963 amendment inserted a new subsection (e) and redesignated former subsection (e) as (f).

32-2142. Persons under the influence of intoxicating liquor or of drugs. (a) * * * [Same as parent volume.]

(b) In any criminal prosecution for a violation of paragraph (a) of this section relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance, shall give rise to the following presumptions:

1. If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood it shall be presumed that the defendant was not under the influence of intoxicating liquor:

2. If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant:

3. If there was at that time 0.10 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor:

4. Per cent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred (100) cubic centimeters of blood:

5. * * * [Same as parent volume.]

(c) to (e) * * * [Same as parent volume.]

(f) The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person upon receiving a record of such person's conviction or forfeiture of bail not vacated under this section.

History: En. Sec. 39, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1961; amd. Sec. 1, Ch. 132, L. 1971.

Effective Date

Section 2 of Ch. 132, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

Amendments

The 1971 amendment reduced the percentage of alcohol required for presumption of intoxication, as specified in subdivisions 2 and 3 of subsection (b), from .15 per cent to .10 per cent; substituted "grams of alcohol per one hundred (100) cubic centimeters of blood" at the end of subdivision 4 for "milligrams of alcohol per one hundred (100) milligrams of blood"; and made minor changes in punctuation.

Improperly Conducted Test

Although it was improper to admit results of blood test showing that deceased's blood contained 0.15% alcohol by weight where testimony disclosed that tube used to collect blood sample had previously contained formalin and formaldehyde which could have resulted in higher than actual alcohol content result, error was not reversible in view of other testimony concerning deceased's state of intoxica-

tion. *Benner v. B. F. Goodrich Co.*, 150 M 97, 430 P 2d 648.

Jurisdiction of Justice of Peace

Since the driving of a vehicle on a highway while under the influence of in-

toxicating liquor is a misdemeanor under this section, it falls within the jurisdiction of a justice of the peace under section 93-410. *Wilson v. Brodie*, 148 M 235, 419 P 2d 306, 308.

32-2142.1. Chemical blood, breath, or urine tests. (a) Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of section 32-2142, R. C. M., 1947, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor. The arresting officer may designate which one of the aforesaid tests shall be administered.

(b) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this section.

(c) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in paragraph (a) of this section, none shall be given, but the Montana highway patrol board, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license or driving privilege of such person on the highways of this state for a period of sixty (60) days. Like refusal by a nonresident shall be subject to suspension by the board in like manner. All such suspensions are subject to review as hereinafter provided.

History: En. Sec. 1, Ch. 131, L. 1971.

Title of Act

An act to provide for an intoxication test and consent thereto, for persons ar-

rested for driving while under the influence of intoxicating liquor, providing for suspension upon refusal of operator to submit to test, providing for an appeal of license suspension.

32-2142.2. Right of appeal to court. (a) Any person whose license or privilege to drive has been suspended, as hereinbefore authorized, the board shall immediately notify such person in writing and such person shall have the right to file a petition within thirty (30) days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside and such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon thirty (30) days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and there-

upon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, whether the person was placed under arrest and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided.

(b) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

(c) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor.

(d) The provisions of this act do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor.

History: En. Sec. 2, Ch. 131, L. 1971.

32-2142.3. Administration of tests. (a) Only a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

(b) The person tested may, at his own expense, have a physician or registered nurse, of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(c) Upon the request of the person tested full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

(d) No physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(e) If the test given under the preceding section is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(f) The Montana highway patrol board in co-operation with the state board of health or any other appropriate agency, shall adopt uniform

standards for the giving of blood alcohol tests and may require certification of training to administer such tests as deemed necessary.

History: En. Sec. 3, Ch. 131, L. 1971.

Separability Clause

Section 4 of Ch. 131, Laws 1971 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given

effect without the invalid provision or application and to this end the provisions of this act are declared to be severable."

Repealing Clause

Section 5 of Ch. 131, Laws 1971 repealed all acts and parts of acts in conflict therewith.

32-2143.1. Permission of authorities to hold speed contest. No race or contest for speed shall be held and no person shall engage in or aid or abet in any motor vehicle speed contest or exhibition of speed on a public highway or street without written permission of the authorities of the state, county or city having jurisdiction and unless the same is fully and efficiently patrolled for the entire distance over which such race or contest for speed is to be held.

History: En. Sec. 1, Ch. 100, L. 1967.

Title of Act

An act prohibiting speed contests and "drag racing" on the public highways or

streets unless written permission is granted by the authorities having jurisdiction over such highways or streets; fixing penalty for violation of act.

32-2143.2. Penalty for unauthorized drag racing. Any person convicted for violation of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500) or by imprisonment in the county or city jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 100, L. 1967.

32-2144. Speed restrictions—basic rule. (a). * * * [Same as parent volume.]

(b) Where no special hazard exists that requires lower speed for compliance with paragraph (a) of this section the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized, shall be lawful, but any speed in excess of the limits specified in this section or established as hereinafter authorized shall be unlawful:

1. Twenty-five (25) miles per hour in any urban district;
2. Thirty-five (35) miles per hour on any highways under construction or repairs;
3. Fifty-five (55) miles per hour in such other locations during the nighttime; except that the nighttime speed limit on those completed sections of interstate highways shall be sixty-five (65) miles per hour, however, the Montana highway commission shall have the authority to establish reduced night speed limits on curves and other dangerous locations as set forth in section 32-2145, R.C.M. 1947.

Daytime means from a half ($\frac{1}{2}$) hour before sunrise to a half ($\frac{1}{2}$) hour after sunset. Nighttime means at any other hour.

The speed limits set forth in this section may be altered as authorized in sections 32-2145 and 32-2146.

(c). * * * [Same as parent volume.]

History: En. Sec. 41, Ch. 263, L. 1955; amd. Sec. 1, Ch. 190, L. 1967.

Amendments

The 1967 amendment added the excep-

tion concerning interstate highways at the end of the first paragraph of subdivision 3 of subsection (b).

32-2146. When local authorities may and shall alter limits. (a) to (c) * * * [Same as parent volume.]

(d) Speed limits on all federal-aid highways or extensions thereof in all municipalities or urban areas shall be established by the highway commission which shall have exclusive jurisdiction on such highways as in compliance with section 32-2144, R. C. M. 1947.

History: En. Sec. 43, Ch. 263, L. 1955; amd. Sec. 1, Ch. 89, L. 1971.

Amendments

The 1971 amendment substituted a new subsection (d) for a subsection reading

"Any alteration of speed limits on state highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the commission."

32-2147. Minimum speed regulations.

Instructions

Where plaintiff's son was killed when car in which he was riding struck rear of defendant's truck which had just turned onto highway, it was reversible error for court to instruct jury on slow speed statute (this section) without requiring that plaintiff show truck had been on road sufficient time to attain a normal

speed. *Hageman v. Townsend*, 144 M 510, 398 P 2d 612.

Purpose

The purpose of this section is rooted in the recognition that the slow driver may be the cause of fatal highway accidents as well as the fast driver. *Hageman v. Townsend*, 144 M 510, 398 P 2d 612.

32-2148. Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers. (a) No person shall operate any truck or truck-tractor the gross weight of which exceeds eight thousand (8,000) pounds at a speed greater than sixty-five (65) miles per hour on those completed sections of interstate and four-lane divided highways, and sixty (60) miles per hour on those completed sections of primary and secondary highways; provided, however, that truck nighttime speed limit shall not exceed that of automobiles as stated in section 32-2144, R. C. M. 1947.

(b) and (c) * * * [Same as parent volume.]

History: En. Sec. 45, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1957; amd. Sec. 1, Ch. 119, L. 1961; amd. Sec. 1, Ch. 253, L. 1971.

Amendments

The 1971 amendment substituted "sixty-five (65) miles per hour * * * as stated in section 32-2144, R. C. M. 1947" for "fifty (50) miles per hour" at the end of subsection (a).

32-2151. Drive on right side of roadway—exceptions.

Application

Defendant's proposed instruction in automobile accident case placing duty upon plaintiff to drive on right side of roadway at all times and under all conditions, and which made plaintiff absolutely negligent as matter of law if she failed to do so,

was not entirely correct statement of law and therefore properly refused since this section and section 32-2153 provide exceptions to rule that one must drive upon right side of roadway. *Lamb v. Page*, 153 M 171, 455 P 2d 337.

Backing over Center-line

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into decedent's traffic lane, defendant's driver was negligent as a matter of law. Hurly

v. Star Transfer Co., 141 M 176, 376 P 2d 504, 507.

References

Williams v. Wallace, 143 M 11, 386 P 2d 744.

32-2152. Passing vehicles proceeding in opposite directions.

References

Cited in Hurly v. Star Transfer Co.,

141 M 176, 376 P 2d 504, 507; Williams v. Wallace, 143 M 11, 386 P 2d 744.

32-2156. Further limitations on driving to left of center, etc.

Contributory Negligence

Plaintiff driving to the left side of the roadway while within one hundred feet of or traversing an intersection in attempting to pass truck was guilty of contributory negligence in collision with truck attempting to make a left turn. Rader v. Nicholls, 140 M 459, 373 P 2d 312, 313.

Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2133, which provides for a uniform system of traffic control devices, it was not error on the judge's part to refuse to instruct the jury on the provisions of this section. Graveley v. Springer, 145 M 486, 402 P 2d 41.

Intersection

An intersection is formed when two publicly maintained ways join at any angle. Rader v. Nicholls, 140 M 459, 373 P 2d 312, 313.

Reliance on Markings

Defendant, who attempted to pass plaintiff's truck within one hundred feet of intersection, in violation of this section, was not negligent per se, since defendant was entitled to rely on the broken white center line, which indicated that passing could be done lawfully at the point where the accident occurred. Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2157. No-passing zones.

Duty of Other Driver

This section does not absolve a driver intending to turn left from the obligation under section 32-2167 of making certain that the turn can be made with reasonable

safety so that plaintiff was contributorily negligent in failing to look to the rear before turning even though defendant was passing him in a no-passing zone. Bellon v. Heinzig, 347 F 2d 4.

32-2159. Driving on roadways laned for traffic.

Backing over Center-line

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into

decedent's traffic lane, defendant's driver was negligent as a matter of law. Hurly v. Star Transfer Co., 141 M 176, 376 P 2d 504, 507.

32-2167. Turning movements and required signals.

Duty To Look to Rear

Since there is no exception to this section for unlawful passing, plaintiff had the affirmative duty to look to the rear, as well as forward, and was contributorily negligent in not looking to the rear before making a left-hand turn, since he could not rely on the presumption that he would not be passed in a no-passing zone. Bellon v. Heinzig, 347 F 2d 4.

Knowledge of Safety Not Required

This section requires that a person making a turning movement take reasonable precautions under the circumstances, but it does not require that such person know with absolute certainty that the turning movement can be made with safety. Holland v. Konda, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

32-2170. Vehicle approaching or entering intersection. (a) When two (2) vehicles enter or approach an intersection from different high-

ways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(b) The right of way rule declared in paragraph (a) is modified at through highways and otherwise as hereinafter stated in this article.

History: En. Sec. 67, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1965.

gining of present paragraph (a); and deleted from present paragraph (b) a reference to former paragraph (a).

Amendment

The 1965 amendment deleted a former paragraph (a), for text of which see parent volume; appropriately redesignated the remaining paragraphs; inserted "or approach" after "enter" near the be-

Repealing Clause

Section 2 of Ch. 175, Laws 1965 repealed all acts and parts of acts in conflict therewith.

32-2171. Vehicle turning left at intersection.

Additional Duties

This section does not purport to catalogue all the rights and duties of a driver intending to turn left and does not negate the existence of an additional duty to maintain a proper lookout for vehicles approaching from the rear, even where

plaintiff was making a left turn in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

References

United States v. Clark, 247 F Supp 958.

32-2173. Vehicle entering highway from private road, driveway or public approach ramp. The driver of a vehicle about to enter or cross a highway from a private road, driveway or public approach ramp shall yield the right of way to all vehicles approaching on said highway.

History: En. Sec. 70, Ch. 263, L. 1955; amd. Sec. 1, Ch. 52, L. 1965.

Amendment

The 1965 amendment inserted "or public approach ramp."

32-2174. Vehicles approaching "Yield" sign. When the intersection is designated by the commission, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the "Yield" sign shall slow to a speed of not more than fifteen (15) miles per hour and yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way.

History: En. Sec. 71, Ch. 263, L. 1955; amd. Sec. 1, Ch. 96, L. 1963.

Amendment

The 1963 amendment deleted "Right of Way" following "Yield" within the quotation marks in three places.

Effective Date

Section 2 of Ch. 96, Laws 1963 provided the act should be in effect after its passage and approval. Approved February 28, 1963.

32-2177. Pedestrians' right of way in crosswalk. (a) and (b). * * * [Same as parent volume.]

(c) It is unlawful for any person to drive a motor vehicle through a column of school children crossing a street or highway or past a member of the school safety patrol while the member of the school safety patrol is directing the movement of children across a street or highway and while

the school safety patrol member is holding his official signal in the stop position.

History: En. Sec. 74, Ch. 263, L. 1955; all acts and parts of acts in conflict there-
amd. Sec. 1, Ch. 54, L. 1965. with.

Amendment **Effective Date**

The 1965 amendment added subsection (c). Section 3 of Ch. 54, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

Repealing Clause

Section 2 of Ch. 54, Laws 1965 repealed

32-2191. Obedience to signal indicating approach of train.

Jury Instructions

Failure of trial court to instruct jury that decedent had been contributorily negligent if he failed to stop, look and listen when either tracks or highway signs indicated the presence of a railway crossing was reversible error. O'Brien v. Great Northern Ry. Co., 145 M 13, 400 P 2d 634, cert. den. 387 US 920, 87 S Ct 2034.

32-2197. Overtaking and passing school bus. (a) The driver of a vehicle upon a highway outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said bus a visual flashing red signal as specified in section 32-21-132 and said driver shall not proceed until such school bus resumes motion, and in addition the driver of a vehicle must slow and proceed with caution when meeting or overtaking from either direction any school bus which is preparing to stop on the highway for the purpose of receiving or discharging any school children as indicated by flashing amber lights as specified in section 32-21-132.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight (8) inches in height, and in addition shall be equipped with visual signals meeting the requirements of section 32-21-132. Amber flashing lights shall be actuated by the driver approximately one hundred and fifty (150) feet in cities, and approximately five hundred (500) feet in other areas before the bus is stopped to receive or discharge school children. Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

(c) and (d). * * * [Same as parent volume.]

History: En. Sec. 94, Ch. 263, L. 1955; second sentence in subsection (b); and
amd. Sec. 1, Ch. 100, L. 1961; amd. Sec. 2, substituted "Red lights" for "which" at
Ch. 250, L. 1965; amd. Sec. 1, Ch. 45, L. the beginning of the third sentence of
1971. subsection (b).

Amendments

The 1965 amendment inserted "or is preparing to stop" after "which has stopped" in subsection (a); inserted "flashing red" before "signal" at the middle part of the section; deleted "or is signaled by the school bus driver to proceed as the visual signals are no

longer actuated" from the end of subsection (a); and added "and in addition the driver * * * as specified in section 32-21-132" at the end of subsection (a).

Cross-References

Lettering requirement under school code, sec. 75-7002.

32-2198. Special lighting equipment on school buses. It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: En. Sec. 95, Ch. 263, L. 1955; amd. Sec. 3, Ch. 250, L. 1965.

Amendment

The 1965 amendment inserted "is preparing to stop or" before "is stopped."

32-21-101. Stopping, standing, or parking prohibited in specified places.**Negligence as Matter of Law**

Crane driver whose crane was blocking bridge was not negligent as matter of law even though he parked crane on bridge in violation of statute proscribing drivers from parking vehicles upon bridge

where suit was between driver of automobile which stopped to avoid crane and driver of second automobile which rear-ended first. *Jimison v. United States*, 267 F Supp 674.

32-21-105. Riding on motorcycles. (1) A person operating a motorcycle on public streets or highways shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the operator.

(2) No passenger shall be carried in a position that will interfere with the operation of the motorcycle or the view of the operator.

(3) No person operating a motorcycle shall carry any packages, bundles, or articles which would interfere with the operation of said vehicle in a safe and prudent manner.

(4) "Side saddle" riding on a motorcycle is prohibited.

(5) Motorcycles are to be operated with lights on at all times when operated on any public highway or street.

(6) Not more than two (2) motorcycles shall be operated side by side in a single traffic lane.

(7) All motor vehicles including motorcycles, are entitled to the full use of a traffic lane, and no vehicle shall be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated not more than two (2) abreast in a single traffic lane.

(8) Every person riding a motorcycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle except as to those provisions which, by their nature, can have no application.

History: En. Sec. 102, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1967.

Amendments

The 1967 amendment numbered the

first paragraph as subsection (1); inserted "on public streets or highways" after "motorcycle" in that subsection; and added subsections (2) through (8).

32-21-118. Tail lamps.

County Road Grader

Statute requiring that tail lamps be not more than 72 inches from ground did not apply to county road grader on which two red tail lamps had been mounted ten feet from ground; motorist suing county for

injury sustained when auto struck road grader from rear was not entitled to instruction that statute had been violated and that county was therefore negligent as matter of law. *Bernhard v. Lincoln County*, 150 M 557, 437 P 2d 377.

32-21-130. Lamps on other vehicles and equipment—emblem to be used on certain slow-moving vehicles—slow-moving vehicles to permit overtaking vehicles to pass. (a) Every vehicle, including animal-drawn vehicles and vehicles referred to in section 32-21-114 (c), not specifically required by the provisions of sections 32-21-114 to 32-21-153 to be equipped with lamps or other lighting devices, shall at all times specified in section 32-21-115 be equipped with at least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of said vehicle, and shall also be equipped with two (2) lamps displaying red light visible from a distance of not less than five hundred (500) feet to the rear of said vehicle, or as an alternative, one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible for distances of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

(b) It shall be unlawful, after January 1, 1970, for any person to operate on the roadway of any state highway, farm, rural or county roads and city streets of this state any slow-moving vehicle or equipment, any animal-drawn vehicle, or any other machinery designed for use at speeds less than twenty-five (25) miles per hour, including all road construction or maintenance machinery, except when engaged in actual construction or maintenance work either guarded by a flagman or clearly visible warning signs, which normally travels or is normally used at a speed of less than twenty-five (25) miles per hour unless there is displayed on the rear thereof an emblem as described in and displayed as provided in subsection (c) of this section. The requirement of such emblem shall be in addition to any lighting devices required by law.

(c) The emblem required by subsection (b) of this section shall be of substantial construction, and shall be a based-down equilateral triangle of fluorescent yellow-orange film or equivalent quality paint with a base of fourteen (14) inches and an altitude of twelve (12) inches. Such triangle shall be bordered with reflective red strips having a minimum width of one and three-fourths ($1\frac{3}{4}$) inches, with the vertices of the overall triangle truncated such that the remaining altitude shall be a minimum of fourteen (14) inches. Such emblem shall be mounted on the rear of such vehicle near the horizontal geometric center of the vehicle at a height of three (3) to five (5) feet above the roadway, and shall be maintained in a clean, reflective condition.

(d) Any person violating the provisions of this section shall be subject to penalty as provided for in section 32-21-157.

(e) In addition to the foregoing requirements, on a highway that has only two lanes for traffic moving in opposite directions, when an overtaking vehicle being operated in conformity with section 32-2144, R. C. M. 1947, does not have a clear lane for passing as required by section 32-2155 and section 32-2156, R. C. M. 1947, the driver of a slower-moving, overtaken vehicle shall, at the first opportunity, whenever sufficient area for a safe turnout exists, move the overtaken vehicle off the main-traveled portion of the highway until the overtaking vehicle is safely clear of the overtaken vehicle.

History: En. Sec. 127, Ch. 263, L. 1955; amd. Sec. 1, Ch. 247, L. 1969.

Amendments

The 1969 amendment added subsections (b) through (e); and designated the first paragraph as subsection (a).

32-21-132. Audible and visual signals on vehicles. (a) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with a siren, exhaust whistle or bell capable of giving an audible signal.

(b) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two (2) alternately flashing red lights located at the same level and to the rear two (2) alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight.

(c) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two (2) red and two (2) amber alternating flashing lights and to the rear two (2) red and two (2) amber alternating flashing lights. These lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. The warning lights shall be of a type, and located on each bus, as prescribed by the state board of education and approved by the supervisor of the highway patrol.

(d) A police vehicle when used as an authorized emergency vehicle may but need not be equipped with alternately flashing red lights specified herein. The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in sections 32-2175 and 32-2197.

History: En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965.

Amendment

The 1965 amendment deleted "Every bus used for the transportation of school children and" at the beginning of subsection (b); inserted a new subsection (c); and redesignated former subsection (c) as (d).

32-21-143. Repealed.**Repeal**

This section (Sec. 140, Ch. 263, L. 1955; Sec. 1, Ch. 81, L. 1957) relating to brakes required on vehicles, was repealed by Sec. 5, Ch. 139, Laws 1965.

32-21-143.1. Brake equipment required. Every motor vehicle, trailer, semitrailer and pole trailer, and any combination of such vehicles operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(a) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in sections 32-2102 (h) and 53-639, R. C. M., 1947, shall be equipped with service brakes complying with the performance requirements of section 2 [32-21-143.2] of this act and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(b) Parking brakes—adequacy. Every such vehicle and combination of vehicles, except motorcycles and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(c) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

1. Trailers, semitrailers, pole trailers of a gross weight not exceeding three thousand (3,000) pounds, provided that:

a. The total weight on and including the wheels of the trailer or trailers shall not exceed forty per cent (40%) of the gross weight of the towing vehicle when connected to the trailer or trailers, and

b. The combination of vehicles, consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

2. Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

3. Trucks and truck-tractors having three (3) or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck-tractors must be capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

4. Special mobile equipment as defined in section 32-2102 (h) and 53-639, R. C. M., 1947.

5. The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

(d) Automatic trailer brake application upon breakaway. Every trailer, semitrailer and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer and pole trailer with a gross weight in excess of three thousand (3,000) pounds, manufactured or assembled after January 1, 1966, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen (15) minutes, upon breakaway from the towing vehicle.

(e) Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1966, and used to tow a trailer, semitrailer or pole trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(f) Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1966, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(g) Two means of emergency brake operation. 1. Air brakes. After January 1, 1966, every towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two (2) means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than twenty (20) pounds per square inch nor higher than forty-five (45) pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

2. Vacuum brakes. After January 1, 1966, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other

than driveaway or towaway operations, shall have, in addition to the single control device required by subsection (h), a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(h) Single control to operate all brakes. After January 1, 1966, every motor vehicle, trailer, semitrailer and pole trailer, and every combination of such vehicles, except motorcycles and motor-driven cycles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(i) Reservoir capacity and check valve. 1. Air brakes. Every bus, truck or truck-tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty per cent (20%). Each reservoir shall be provided with means for readily draining accumulated oil or water.

2. Vacuum brakes. After January 1, 1966, every truck with three (3) or more axles equipped with vacuum assistor type brakes and every truck-tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty per cent (40%).

3. Reservoir safeguarded. All motor vehicles, trailers, semitrailers and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(j) Warning devices. 1. Air brakes. Every bus, truck or truck-tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below fifty per cent (50%) of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible

to the driver, which indicates in pounds per square inch the pressure available for braking.

2. Vacuum brakes. After January 1, 1966, every truck-tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three (3) or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight (8) inches of mercury.

3. Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

History: En. Sec. 1, Ch. 139, L. 1965.

Compiler's Notes

Section 53-639, referred to in subdivisions (a) and (c) 4 of this section, was repealed by Sec. 12-109, Ch. 197, L. 1965.

Title of Act

An act to establish uniform and modern regulations relating to brakes on vehicles; requiring brakes on all vehicles and spe-

cifying exceptions thereto; requiring vehicles to be equipped with both service and parking brakes; establishing performance ability of brakes; defining hydraulic brake fluid; authorizing patrol board to adopt brake fluid standards and specifications; prohibiting the sale of brake fluid which does not meet specifications; repealing section 32-21-143, R. C. M., 1947, and all acts or parts of acts in conflict herewith.

32-21-143.2. Performance ability of brakes. Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification,

(b) Decelerating to a stop from not more than twenty (20) miles per hour at not less than the feet per second per second tabulated herein for its classification, and

(c) Stopping from a speed of twenty (20) miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one per cent (1%) grade), dry, smooth, hard surface that is free from loose material.

Classification of Vehicles	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of twenty (20) miles per hour
A Passenger vehicles with a seating capacity of ten (10) people or less including driver, not having a manufacturer's gross vehicle weight rating-----	52.8%	17	25
B-1 All motorcycles and motor-driven cycles	43.5%	14	30
B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of ten thousand (10,000) pounds or less-----	43.5%	14	30
C-1 Single unit vehicles with a manufacturer's gross weight rating of more than ten thousand (10,000) pounds --	43.5%	14	40
C-2 Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of three thousand (3,000) pounds or less	43.5%	14	40
C-3 Buses, regardless of the number of axles, not having a manufacturer's gross weight rating-----	43.5%	14	40
C-4 All combinations of vehicles in driveaway-towaway operations -----	43.5%	14	40
D All other vehicles and combinations of vehicles -----	43.5%	14	50

History: En. Sec. 2, Ch. 139, L. 1965.

32-21-143.3. Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

History: En. Sec. 3, Ch. 139, L. 1965.

32-21-143.4. Hydraulic brake fluid. (a) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(b) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(c) The Montana highway patrol board shall, after public hearing following due notice, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(d) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this section. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section.

History: En. Sec. 4, Ch. 139, L. 1965.

"Repealing section 32-21-143, R. C. M. 1947, and all acts or parts of acts in conflict herewith."

Repealing Clause

Section 5 of Ch. 139, Laws 1965 read

32-21-144. Brakes on motor-driven cycles.

Compiler's Notes

Section 32-21-143, referred to in sub-

section (a) in the parent volume, was repealed by Sec. 5, Ch. 139, Laws 1965.

32-21-149. Restrictions as to tire equipment. (a). * * * [Same as parent volume.]

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal, which shall in no instance protrude more than one-sixteenth (1/16) of an inch beyond the tire tread, upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. The use of pneumatic tires embedded as herein provided shall be permitted only between the first day of October and the last day of May of each year, except that one such tire may be used for a spare in case of tire failure.

(d) * * * [Same as parent volume.]

(e) Any person violating the terms of this act shall be guilty of misdemeanor.

History: En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967; amd. Sec. 1, Ch. 194, L. 1971.

Amendments

The 1967 amendment inserted "the" before "roadway" in subsection (b); and inserted "or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic

or metal" after "proportions" in subsection (c).

The 1971 amendment inserted "which shall in no instance protrude more than one-sixteenth (1/16) of an inch beyond the tire tread" near the end of the first sentence of subsection (c); added the second sentence to subsection (c); and added subsection (e).

32-21-149.1. Fenders, splash aprons or flaps required on certain vehicles—dimension and location—violation a misdemeanor—penalty. (a) It shall be unlawful for any person to move, or permit to be moved, any truck, bus, truck-tractor, trailer or semitrailer, as defined in sections 32-2102 to 32-2105, R. C. M. 1947, inclusive, upon the public highways without having first equipped the rearmost wheels or set of wheels

of such vehicle with fenders, splash aprons or flaps. Such fenders, splash aprons or flaps shall be designed, constructed and attached to the vehicle in such manner so as to arrest and deflect dirt, mud, water, rocks and other substances which may be picked up by the rear wheels of such vehicle and thrown into the air, as follows:

(1) If the vehicle is equipped with fenders the same shall extend in full width from a point above and forward of the center of the tire or tires over and to the rear thereof.

(2) If the vehicle is equipped with splash aprons or flaps the same shall extend downward in full width from a point not lower than half-way between the center of the tire or tires and the top of said tire or tires and to the rear thereof.

(3) If the vehicle is in excess of eight thousand (8,000) pounds gross vehicle weight, such fenders, splash aprons or flaps shall extend downward to a point that is not more than ten (10) inches above the surface of the highway when the vehicle is empty.

(4) If the vehicle is eight thousand (8,000) pounds, or less, gross vehicle weight, such fenders, splash aprons or flaps shall extend downward to a point that is not more than twenty (20) inches above the surface of the highway when the vehicle is empty.

(b) Fenders, splash aprons or flaps, as used in paragraph (a) of this section shall be deemed to be of sufficient size and construction as to comply with the requirements thereof, if constructed as follows:

(1) When measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, such fender, splash apron or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires, as the case may be; and

(2) Such fender, splash apron or flap is so constructed as to be capable at all times of arresting and deflecting such dirt, mud, water, or other substance as may be picked up and carried by such wheel or wheels.

(c) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10) nor more than twenty-five dollars (\$25), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 286, L. 1969.

Title of Act

An act to require fenders or covers on certain wheels of specified types of motor

vehicles; defining the dimensions and locations of such fenders or covers; and providing penalties for any violation of this act.

32-21-150.1. Seat belts required in new vehicles. It is unlawful for any person to buy, sell, lease, trade or transfer from or to Montana residents at retail an automobile, which is manufactured or assembled commencing with the 1966 models, unless such vehicle is equipped with safety belts

installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed.

History: En. Sec. 1, Ch. 115, L. 1965.

Title of Act

An act requiring that seat belts be installed in all automobiles manufactured or assembled commencing with the 1966

models; directing the highway patrol supervisor to establish specifications and requirements for approved types of safety belts and attachments; and providing a penalty.

32-21-150.2. Specifications for seat belts. All such safety belts must be of a type and must be installed in a manner approved by the highway patrol supervisor. The highway patrol supervisor shall establish specifications and requirements for approved types of safety belts and attachments thereto. The highway patrol supervisor will accept, as approved, all seat belt installations and the belt and anchor meeting the society of automotive engineers' specifications.

History: En. Sec. 2, Ch. 115, L. 1965.

32-21-150.3. Penalty for seat belt violations. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars (\$100.00).

History: En. Sec. 3, Ch. 115, L. 1965.

32-21-155.1. Annual inspection of school buses. (1) The Montana highway patrol shall perform the annual inspection of school buses at least thirty (30) days prior to the beginning of the school term and reinspect the buses, if necessary, before the beginning of the school term.

(2) The Montana highway patrol's inspection shall determine if the school buses meet the minimum standards for school buses as adopted by the board of education.

History: En. 32-21-155.1 by Sec. 2, Ch. 179, L. 1969.

Cross-References

Reimbursements to schools for transportation of pupils, sec. 75-3413.

32-21-161. Commercial tow car requirements.

Application Limited

Where logging truck was struck from behind while engaged in removing disabled automobile from ditch, contention that logging truck violated this section by not being equipped with appropriate warn-

ing and safety devices was without merit since this section applies to tow cars and not vehicles such as logging truck herein involved. State ex rel. Eacker v. District Court, 154 M 36, 459 P 2d 686.

32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when. The district courts and the justice courts of the state of Montana and the municipal and police courts of cities and towns shall have concurrent original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of eighteen (18) years. Whenever, after a hearing before the court, it shall be found that a child under the age of eighteen (18) years has unlawfully operated a motor vehicle, the court may (a) impose a fine, not exceeding fifty dollars (\$50), provided such child shall not be imprisoned

for failure to pay such fine, (b) may revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court, and (c) may order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding sixty (60) days, as shall be fixed by the court; provided, however, that if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child with the consent of the owner shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

History: En. Sec. 1, Ch. 215, L. 1959; amd. Sec. 1, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "and the justice courts" and "and the municipal and police courts of cities and towns" in

the first sentence; substituted "concurrent original jurisdiction" for "exclusive original jurisdiction" in the first sentence; and added to clause (a) of the second sentence the words "provided such child shall not be imprisoned for failure to pay such fine."

32-21-164. Summons—issuing to child under eighteen. Whenever any child under the age of eighteen (18) years shall unlawfully operate a motor vehicle in the presence of any peace officer of any county, city or town, or in the presence of any state highway patrolman, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to report to the district court or a justice court of the county or the municipal or police court of the city or town wherein the offense occurs; and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the judge or justice of the peace.

History: En. Sec. 2, Ch. 215, L. 1959; amd. Sec. 2, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "or a

justice court" and "or the municipal or police court of the city or town"; and substituted "judge or justice of the peace" for "district judge" at the end of the section.

32-21-166. Vehicle equipment safety compact—text. This act shall be known and may be cited as the "Vehicle Equipment Safety Compact."

ARTICLE I—FINDINGS AND PURPOSES

(a) The party states find that: (1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional co-operation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish

this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to: (1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II—DEFINITIONS

As used in this compact: (a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III—THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency

or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV—RESEARCH AND TESTING

The commission shall have power to: (a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or co-ordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V—VEHICULAR EQUIPMENT

(a) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty (60) days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six (6) months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI—FINANCE

(a) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third ($1/3$) in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall

indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III (h) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII—CONFLICT OF INTEREST

(a) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(b) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor

to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII—ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may co-operate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any six (6) or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 109, L. 1965.

Compiler's Notes

Nebraska, pursuant to Legislative Bill 923, has withdrawn from the Vehicle Equipment Safety Compact.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation to provide a means to speed up the development and adoption of uniform standards for new or improved automotive safety equipment and to be known as the Vehicle Equipment Safety Compact; setting forth the basic purposes of the compact; defining certain terms used in the act; establishing

a vehicle equipment safety commission and outlining the composition, duties and responsibilities of such commission; authorizing commission to establish salaries and retirement system for full-time employees; providing that commission will have an appointed commissioner from each party state with commission business expenses to be paid by compact commission; empowering commission to carry on "library type" research but prohibiting other type research and testing; authorizing commission to issue rules and regulations embodying performance requirements for items of equipment after conducting a needs study, publishing report of such study and holding hearings;

providing that party states are not obligated to adopt rules, regulations or codes of commission but must consider them; providing that official adoption of rules, regulations or codes of the commission shall require affirmative action by the legislature of the state of Montana before such rules, regulations or codes shall be effective in Montana; requiring commission to submit to the budget director of Montana the budget of the commission, the costs of which are to be apportioned among the member states on the basis that each member state contribute equal

moneys for one-third ($\frac{1}{3}$) of the total commission budget and that the remainder of the budget be apportioned according to the number of motor vehicles registered in the party state; requiring that commission adopt rules and regulations to minimize conflicts of interest; authorizing commission to establish advisory and technical committees; providing for entry into and withdrawal from compact; providing for construction and severability of act; repealing all acts or parts of acts in conflict herewith.

32-21-167. Legislative findings on equipment safety. The legislature finds that: (1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.

(2) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

(3) The Montana highway patrol board, acting upon recommendations of the vehicle equipment safety commission and pursuant to the Vehicle Equipment Safety Compact, provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this act.

History: En. Sec. 2, Ch. 109, L. 1965.

32-21-168. Equipment requirements continued in force. (a) Provisions of sections 32-21-114 to 32-21-161, inclusive, R. C. M., 1947, shall continue to be of force and effect. The approval of the legislature of the state of Montana is a condition precedent to the taking effect of any rule, regulation or code that may be issued or adopted by the commission.

History: En. Sec. 3, Ch. 109, L. 1965.

32-21-169. State commissioner on vehicle equipment safety commission. The commissioner of this state on the vehicle equipment safety commission shall be the highway patrol supervisor who shall serve during his continuance as such officer. The commissioner of this state appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place and stead on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of such alternate shall be as determined by the commissioner designating such alternate.

History: En. Sec. 4, Ch. 109, L. 1965.

32-21-170. Retirement of equipment safety commission employees. The public employees retirement board of Montana may make an agree-

ment with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to Article III (f) of the compact. Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History: En. Sec. 5, Ch. 109, L. 1965.

32-21-171. Governmental agencies to co-operate with equipment safety commission. Within appropriations available therefor, the departments, agencies and officers of the government of this state may co-operate with and assist the vehicle equipment safety commission within the scope contemplated by Article III (h) of the compact. The departments, agencies and officers of the government of this state are authorized generally to co-operate with said commission.

History: En. Sec. 6, Ch. 109, L. 1965.

32-21-172. Documents filed and notices given by equipment safety commission. Filing of documents as required by Article III (j) of the compact shall be with the Montana highway patrol board. Any and all notices required by commission bylaws to be given pursuant to Article III (j) of the compact shall be given to the commissioner of this state and his alternate.

History: En. Sec. 7, Ch. 109, L. 1965.

32-21-173. Equipment safety commission budgets. Pursuant to Article VI (a) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

History: En. Sec. 8, Ch. 109, L. 1965.

32-21-174. Equipment safety commission accounts. Pursuant to Article VI (e) of the compact, the state examiner is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission.

History: En. Sec. 9, Ch. 109, L. 1965.

Repealing Clause

Section 10 of Ch. 109, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(o).

32-21-175. Governor as executive head for compact purposes. The term "executive head" as used in Article IX (b) of the compact shall, with reference to this state, mean the governor.

History: En. Sec. 11, Ch. 109, L. 1965.

CHAPTER 22—HIGHWAY CODE—GENERAL PROVISIONS

- Section 32-2201. Legislative findings.
 32-2202. Legislative policy and intent.
 32-2203. General definitions.

32-2201. Legislative findings. The legislative assembly recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and hereby determines and declares that:

(1) Inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state.

(2) The problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent.

(3) Therefore, adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state of Montana.

(4) Providing adequate highway facilities is a proper public use and purpose, and that this act is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

History: En. Sec. 1, Ch. 197, L. 1965.

Compiler's Note

This section and sec. 32-2202 were designated as Chapter 1 of the Highway Code, entitled "Legislative Intent."

Title of Act

An act to be known as the Montana Highway Code, for the codification and general revision of the laws pertaining to highways, including planning, construction, and maintenance; amending sections 16-1004, 16-2008, 16-2010, 16-2011, 16-3302, 53-122, 84-1831, 94-3202, and 94-3565, R. C. M. 1947, and repealing sections 16-1004.1, 16-1118, 16-1127, 16-1128, 16-2009, 16-2201 through 16-2204, 16-3311, 16-3312,

32-102 through 32-107, 32-201 through 32-208, 32-302 through 32-314, 32-316, 32-401 through 32-413, 32-415, 32-416, 32-501 through 32-507, 32-509 through 32-526, 32-601, 32-602, 32-701 through 32-711, 32-713 through 32-715, 32-901 through 32-905, 32-1002 through 32-1010, 32-1012 through 32-1014, 32-1016, 32-1301, 32-1601 through 32-1610, 32-1613 through 32-1618, 32-1620, 32-1622 through 32-1626, 32-1801 through 32-1804, 32-1901 through 32-1915, 32-2001 through 32-2010, 53-615 through 53-619, 53-621 through 53-623, 53-628 through 53-631, 53-634 through 53-639, 53-643, 84-1812 (1), 84-1812 (2), 84-1815, 84-1817, 89-821, 89-822, and 94-3201, R. C. M. 1947; providing for a savings clause and providing for the effective date of this act.

32-2202. Legislative policy and intent. Consistent with the foregoing determinations and declarations the legislative assembly intends:

(1) To place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain and protect the highway facilities of this state for present as well as for future use.

(2) To make the state highway commission custodian of the federal-aid and state highways, and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction.

(3) That the state of Montana shall have integrated systems of highways, roads, and streets, and that the state highway commission, the counties and municipalities assist and co-operate with each other to that end.

(4) To provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently

in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

History: En. Sec. 2, Ch. 197, L. 1965.

32-2203. General definitions. Subject to additional definitions contained in subsequent chapters of this code which are applicable to specific chapters or parts, and unless the context otherwise requires, terms are defined as follows:

(1) "Abandonment"—Cessation of use of right of way (easement) or activity thereon with no intention to reclaim or use again. (Sometimes called "vacation.")

(2) "Auditor"—County auditor.

(3) "Authority"—Montana toll bridge authority.

(4) "Board"—Board of county commissioners.

(5) "Bridge"—Includes rights of way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

(6) "Clerk"—County clerk and recorder.

(7) "Commission"—State highway commission.

(8) "Committee"—Local improvement district committee of supervisors.

(9) "Condemnation"—Taking by exercise of the right of eminent domain.

(10) "Construction"—Supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping, costs of right of way or other interests in land and elimination of hazards at railway-grade crossings.

(11) "Control of access"—The condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(12) "County road"—Any public highway opened, established, constructed, maintained, abandoned, or discontinued in accordance with the provisions of part 2 of chapter 8 [chapter 40 of this title] and part 4 of chapter 5 [chapter 31 of this title] of this code.

(13) "Easement"—A right acquired by public authority to use or control property for a designated purpose.

(14) "Eminent domain"—The right of the state to take private property for public use.

(15) "Engineer"—State highway engineer.

(16) "Federal-aid highway"—Any public highway which is a portion of any of the federal-aid highway systems.

(17) "Federal-aid highway systems"—All of the systems named hereafter and their urban extensions.

(18) "Federal-aid interstate system"—That system of public highway selected by the commission in co-operation with adjoining states, subject to the approval of the secretary of commerce as provided in the Federal Highway Act, as amended.

(19) "Federal-aid primary system"—That system of connected public

highways designated by the commission subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(20) "Federal-aid secondary system"—That system of public highways not on the federal-aid primary or interstate systems selected by the commission in co-operation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(21) "Fee simple"—An absolute estate or ownership in property including unlimited power of alienation.

(22) "Highway"—Includes rights of way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(23) "Highway," "road," "street"—Whether they appear together or separately or are preceded by the adjective "public," these are general terms denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

(24) "Highway authority (ies)"—The entity (ies) at any level of government authorized by law to construct and maintain highways.

(25) "Maintenance"—Preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

(26) "Public highways"—All streets, roads, highways, bridges, and related structures, which have been or shall be:

(a) Built and maintained with appropriated funds of the United States or the state or any political subdivision thereof.

(b) Dedicated to public use.

(c) Acquired by eminent domain.

(d) Acquired by adverse user by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(27) "Right of way"—A general term denoting land, property, or any interest therein, usually in a strip, acquired for or devoted to highway purposes.

(28) "State highway"—Any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the commission.

(29) "Superintendent"—County road superintendent.

(30) "Supervisor"—County road supervisor.

(31) "Surveyor"—County surveyor.

(32) "Toll bridge"—Any bridge constructed by the Montana toll bridge authority, together with all appurtenances, additions, alterations, improvements, replacements, and the approaches thereto, lands used therefor, and improvements thereon.

(33) "Treasurer"—County treasurer.

History: En. Sec. 2-101, Ch. 197, L. 1965.

Compiler's Note

This section was designated as Chapter 2 of the Highway Code, entitled "Definitions."

CHAPTER 23—CLASSIFICATION OF HIGHWAYS

- Section 32-2301. Classification—highways and roads.
 32-2302. Lewis and Clark highway.

32-2301. Classification—highways and roads. (1) Public highways of this state are classed as follows:

- (a) Federal-aid highways
- (b) State highways
- (c) County roads
- (d) City streets.

(2) All highways which are not designated, selected, established, constructed, or maintained by the commission are county roads or city streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued, in accordance with the provisions of part 2 of chapter 8 [chapter 40 of this title] and part 4 of chapter 5 [chapter 31 of this title] of this code.

(4) City streets are those public highways under the jurisdiction of municipal officials.

History: En. Sec. 3-101, Ch. 197, L. 1965. **Compiler's Note**

This chapter was designated as Chapter 3 of the Highway Code, entitled "Classification of Highways."

32-2302. Lewis and Clark highway. There is hereby established the Lewis and Clark highway. It shall be composed of the following existing routes: (1) From the Idaho state line west of Lolo Hot Springs, Montana, to the junction with U. S. highway ninety-three (93) at Lolo.

(2) Thence north from Lolo on U. S. highway ninety-three (93) to Missoula.

(3) Thence east from Missoula on U. S. highway twelve (12) and ten (10) to Garrison.

(4) Thence east from Garrison on U. S. highway twelve (12) through Forsyth and Baker to the North Dakota state line.

History: En. Sec. 3-102, Ch. 197, L. 1965.

CHAPTER 24—ASSENT TO FEDERAL AID—STATE HIGHWAY COMMISSION, POWERS AND DUTIES

- Section 32-2401. Assent to federal-aid acts.
 32-2402. State highway commission.
 32-2403. Commission members—qualifications—appointment.
 32-2404. Commission members—bond—expenses.
 32-2405. Commission—chairman—meetings.
 32-2406. General power of commission.
 32-2407. Commission to designate highways.
 32-2408. Designation of highways not located entirely within the state.
 32-2409. Duties of commission—reports.
 32-2410. Compilation of statistics—investigation—consultation.
 32-2411. Agreements concerning effects of weight on highways.
 32-2412. Seeding along highways.

- 32-2413. Description and plan of new highway or reconstructed or controlled access facility—recording.
- 32-2414. Relocation of utilities facilities—hearings—order.
- 32-2415. Relocation—costs.
- 32-2416. Relocation—definitions.
- 32-2417. Certification and payment of claims.
- 32-2418. Prosecution for violation.
- 32-2419. Ports of entry and checking stations authorized.
- 32-2420. Checking stations required at major points of entry into state.
- 32-2421. Co-operation in use of ports of entry and checking stations.
- 32-2422. Purposes of act.
- 32-2423. Purposes for which federal funds to be expended.
- 32-2424. Extent of interest acquired.
- 32-2425. Expenditure of funds.
- 32-2426. Commission to fence along state highways through open range where livestock a hazard—gates—"open range" defined.
- 32-2427. Commission to designate areas where fencing needed.

32-2401. Assent to federal-aid acts. (1) The legislative assembly, for and on behalf of the state of Montana, assents to the provisions of the Federal-Aid Road Act, approved July 1, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto.

(2) The commission may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The commission may make all rules necessary to comply with the provisions of the acts assented to, and all other acts granting aid for public highways, and to obtain for the state the full benefits of such acts.

(4) The commission may do all other things necessary or required to carry out fully the co-operation contemplated by the acts of Congress assented to.

History: En. Sec. 4-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 24 to 27, inclusive, of this title (except secs. 32-2419 to 32-2421) were des-

ignated as Chapter 4 of the Highway Code, entitled "State Administration." Sections 32-2401 to 32-2418 herein were designated as Part 1 of Chapter 4, entitled "Assent to Federal Aid. State Highway Commission, Powers and Duties."

32-2402. State highway commission. The state highway commission consists of five (5) members to be appointed by the governor with the consent of the senate. Members of the commission now holding office shall continue until the expiration of their terms.

History: En. Sec. 4-102, Ch. 197, L. 1965.

Compiler's Notes

Chapter 141, Laws 1969 created an interim committee to conduct a comprehensive study of the administration and operation of the Montana highway department in co-operation with the state highway commission and provided an appropriation. Chapter 377, Laws 1969, as

amended by Ch. 356, Laws 1971, provided for the issuance and sale of bonds by the state board of examiners for the purpose of acquiring a site for and erecting a state highway commission headquarters building and complex at or near Helena.

Cross-References

Commission continued as quasi-judicial board, sec. 82A-706.

32-2403. Commission members—qualifications—appointment. (1) Each member shall be a citizen of the United States and a resident of the state of Montana.

(2) One (1) member shall be a bona fide resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson, Broadwater.

(b) District 2. Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park, Sweet Grass.

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin.

(d) District 4. Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan.

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter, Fallon.

(3) (a) The terms of office of the members of the state highway commission shall be for four (4) years, and shall expire on the first day of February.

(b) If a vacancy occurs, the governor shall appoint with the consent of the senate a person having the qualifications herein provided who shall hold office only for the unexpired portion of the term in which the vacancy occurs.

(4) (a) No two (2) members shall at the time of appointment or thereafter during their respective terms of office be residents of the same district.

(b) Not more than three (3) members shall at the time of appointment or thereafter during their respective terms be members of the same political party.

(c) No elective state official or state officer during the term of office to which he was elected or appointed and no state employee shall be a member of the commission.

(d) No member shall be removed from office by the governor before the expiration of his term except for a disqualifying change of residence or for a cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office.

History: En. Sec. 4-103, Ch. 197, L. 1965.

Cross-References

Terms of office of commission members after reorganization, sec. 82A-112(2)(b).

32-2404. Commission members—bond—expenses. (1) Each member shall give bond conditioned for the faithful performance of his duties in the sum of ten thousand dollars (\$10,000).

(2) Each member shall receive twenty dollars (\$20) per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission. Each member shall also receive his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be required of him by a majority vote of the

commission. In no event shall a member's per diem payments exceed two thousand dollars (\$2,000) in any one (1) year.

History: En. Sec. 4-104, Ch. 197, L. 1965.

32-2405. Commission—chairman—meetings. (1) Annually the commission shall elect one (1) of its members as chairman. Election as chairman shall not interfere with the member's right to vote on all matters before the commission.

(2) The commission shall meet at least once each month for the purpose of transacting business including the consideration of claims and the letting of contracts.

(3) Three (3) members shall constitute a quorum. No resolution, motion, or other decision of the commission shall be adopted or passed without the favorable vote of at least three (3) members.

History: En. Sec. 4-105, Ch. 197, L. 1965.

32-2406. General power of commission. The commission may plan, lay out, alter, construct, reconstruct, improve, repair, maintain, and abandon highways on the federal-aid systems and state highways. It may co-operate and contract with counties and municipalities to provide assistance in performing such functions on other highways and streets.

History: En. Sec. 4-106, Ch. 197, L. 1965.

Judicial Review

Where state highway commission conducted investigations and held hearings to determine number of interchanges and their location with respect to new interstate highway and nearby town, and

agreed that one interchange was sufficient, district court abused its discretion in issuing writ of mandamus ordering commission to construct two such interchanges since commission complied with this section and its decision cannot be disturbed unless clear abuse of discretion is shown. *Erie v. State ex rel. State Highway Commission*, 154 M 150, 461 P 2d 207.

32-2407. Commission to designate highways. (1) The commission shall designate such public highways in the state as shall be classed as the federal-aid primary system.

(2) The commission shall in co-operation with the board of county commissioners, select such public highways in the state as shall be classed as the federal-aid secondary system, taking into consideration the traffic count on said highway, the continuity of said highway in relation to the state highway systems as the same may connect or tie into a unified system of federal-aid highways and the taxable valuations which are affected by said highway.

(3) The commission shall, in co-operation with adjoining states, select the routes of the federal-aid interstate system.

(4) The commission shall designate such public highways in the state as shall be classed as state highways and make necessary rules and regulations for the construction, repair, maintenance, and marking of state highways and bridges.

History: En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967.

Amendments

The 1967 amendment added the passage beginning, "taking into consideration"

after "secondary system" at the end of subsection (2).

Cross-References

Commission functions transferred, sec. 82A-703.

Commission Regulations as Evidence

In action for wrongful death of driver of state highway truck while sanding road

in snowstorm, it was error to admit into evidence Safety Manual adopted by highway commission and requiring that engineers, supervisors and foremen erect warning devices upon highway before beginning work since requirement imposed no duty upon deceased driver to erect warning devices. *Williams v. Maley*, 150 M 261, 434 P 2d 398.

32-2408. Designation of highways not located entirely within the state. (1) The commission may designate highways subject to improvement under the provisions of the Federal-Aid Road Act, approved July 11, 1916, the Federal Highway Act, approved November 9, 1921, and all amendments thereto, even though such highways are not located entirely and continuously within the boundaries of the state. Such designations shall meet the following conditions:

(a) That the highway is on an approved federal-aid route and eligible for improvement under the federal-aid acts.

(b) That the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable.

(c) That the portion of the route located outside the state does not connect with and is not a part of the state highway system of the adjoining state.

(2) The commission may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of such highways. It may do all things necessary or required to carry out fully the co-operation contemplated under the federal-aid acts with regard thereto.

History: En. Sec. 4-108, Ch. 197, L. 1965.

32-2409. Duties of commission—reports. The commission shall: (1) Make all rules and regulations necessary for its government.

(2) Maintain and preserve all its records in its office at the capitol, keeping its office open at such times as its business shall require.

(3) File and preserve:

(a) A record of all proceedings and orders pertaining to the matters under its direction.

(b) Copies of all plans, specifications, contracts, estimates and official acts.

(4) Prepare and submit to the governor on or before the fifteenth day of each month a report of work constructed, under construction, and proposed for construction, the progress made during the preceding month, and recommendation for improvements and their estimated costs.

(5) Report as provided in section 2 [82-4002] of this act.

History: En. Sec. 4-109, Ch. 197, L. 1965; amd. Sec. 11, Ch. 93, L. 1969.

Amendments

The 1969 amendment, in subsection (5),

substituted the specified reporting requirement for provisions detailing a required biennial report to the governor and the legislative assembly.

32-2410. Compilation of statistics—investigation—consultation. (1) The commission shall compile statistics regarding public highways throughout the state and collect all related information deemed expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state, and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The commission and the state highway engineer may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The commission and the engineer shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. They shall at all times lend their aid in promoting highway improvement throughout the state.

History: En. Sec. 4-110, Ch. 197, L. 1965.

32-2411. Agreements concerning effects of weight on highways. (1) The commission may contract with the United States or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or co-operative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads.

History: En. Sec. 4-111, Ch. 197, L. 1965.

32-2412. Seeding along highways. (1) After a federal-aid or state highway is constructed, the commission shall seed borrow pits, slopes and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed shall be certified.

(2) The commission shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices and grass species from the Montana extension service, the experiment station, and the soil conservation service.

History: En. Sec. 4-112, Ch. 197, L. 1965.

32-2413. Description and plan of new highway or reconstructed or controlled access facility—recording. (1) Whenever the commission shall establish the location width, and lines of any new, reconstructed, or proposed highway, or declare any road, street or highway as a controlled access facility, it shall make a description and plan showing the center line and the established width, the immediate boundary lines of all private property over, across or through which said highway shall pass, the name or names of the owner thereof, the boundaries of that

part of such private ownership as shall be included within the right of way of said highway and the parcel number assigned to that part of each ownership included within said highway right of way, together with the project number under which said highway shall be or is proposed to be constructed or reconstructed.

(2) That reference to the project number, parcel number, and section, or quarter section, tract, block or lot from which the same has been subdivided shall constitute good and valid description of said parcel in all deeds given to or received from the state of Montana wherein any parcel shall be transferred.

History: En. Sec. 4-113, Ch. 197, L. 1965; amd. Sec. 1, Ch. 131, L. 1969.

Amendments

The 1969 amendment inserted reference to reconstructed highways in subsection (1) and added "the immediate boundary * * * to be constructed or reconstructed" and rewrote subsection (2) which formerly called for recording of description

and plan and copy of commission resolution in a special book to be furnished to county clerk and recorder by the commission.

Effective Date

Section 2 of Ch. 131, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

32-2414. Relocation of utilities facilities—hearings—order. (1) After appropriate hearings, the commission may make and publish reasonable regulations for the installation, construction, maintenance, repair, renewal, or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of any utility in, on, along, over, across, through or under any project on any of the federal-aid systems.

(2) The commission shall give written notice of the place and time of a public hearing to determine the necessity of any relocation of facilities to all concerned not less than twenty (20) days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.

(3) After the hearing, the commission may determine that any such facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the valid order of the commission. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.

History: En. Sec. 4-114, Ch. 197, L. 1965.

32-2415. Relocation—costs. Seventy-five per cent (75 %) of all costs of relocation, including the costs of acquisition of new right of way, of dismantling, and of removal, shall be paid by the commission as a cost of highway construction.

History: En. Sec. 4-115, Ch. 197, L. 1965.

32-2416. Relocation—definitions. For the purposes of the sections relating to relocation of utilities facilities, terms are defined as follows: (1) Utility—Includes publicly, privately, and co-operatively owned utilities.

(2) **Cost of relocation**—Includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) **Federal-aid systems**—Includes the federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them.

(4) **Interstate system**—Includes any highway now included or which shall hereafter be included as a part of the National System of Interstate and Defense Highways, provided for in the Federal-Aid Highway Act of 1956 and supplements or amendments.

History: En. Sec. 4-116, Ch. 197, L. 1965.

32-2417. Certification and payment of claims. (1) All accounts and expenditures shall be certified by the state highway engineer and paid by the state treasurer upon warrants drawn by the state auditor out of the proper funds.

(2) The commission shall certify the fund against which the warrant is to be drawn and state the project to which the payment will apply.

(3) The commission shall keep accounts showing the amount of money received for each project and the itemized expenses therefor.

History: En. Sec. 4-117, Ch. 197, L. 1965.

32-2418. Prosecution for violation. The commission shall prosecute any person guilty of violation of this code.

History: En. Sec. 4-118, Ch. 197, L. 1965.

32-2419. Ports of entry and checking stations authorized. To augment and help make more efficient and effective the enforcement of certain laws of the state of Montana, the state highway commission is hereby authorized and directed to establish from time to time temporary or permanent ports of entry or checking stations upon any highways in the state of Montana and at such places as the state highway commission shall deem necessary and advisable.

History: En. Sec. 1, Ch. 137, L. 1965.

Compiler's Note

Sections 32-2419 to 32-2421, inclusive, were not enacted as a part of the Highway Code. They did, however, become effective on the same date as the Highway Code, December 31, 1966.

Title of Act

An act authorizing and directing the state highway commission to establish temporary and permanent ports of entry and checking stations.

32-2420. Checking stations required at major points of entry into state. In addition to the power granted to the state highway commission in section 1 [32-2419] of this act, it shall be the duty of the commission to establish checking stations at convenient points on the major highways

entering this state, and such checking stations shall be kept open at all times.

History: En. Sec. 2, Ch. 137, L. 1965.

32-2421. Co-operation in use of ports of entry and checking stations. The state highway commission shall co-operate with all other agencies of this state, or any political subdivisions thereof, in the use of such ports of entry or checking stations, so that maximum use can be made of such facilities in enforcement of the laws of this state.

History: En. Sec. 3, Ch. 137, L. 1965. **Effective Date**

Budget

Section 4, Ch. 137, Laws 1965, related to preparation of the budget for the 1967-1968 biennium and is omitted as temporary.

Section 5 of Ch. 137, Laws 1965 read "This act is effective December 31, 1966."

32-2422. Purposes of act. (1) To promote the safety, convenience and enjoyment of travel on, and protection of the public investment in the highways of this state.

(2) To restore, preserve and enhance scenic beauty within the right of way of and adjacent to such highways.

(3) To entitle the state to receive and expend the three per centum (3%) nonmatching funds from the United States pursuant to the provisions of title 23, United States Code.

History: En. Sec. 1, Ch. 286, L. 1967. land for the restoration, preservation and enhancement of scenic beauty within and adjacent to federal-aid highways.

Title of Act

An act providing for the acquisition of

32-2423. Purposes for which federal funds to be expended. The state highway commission is authorized to expend funds apportioned to the state under Public Law 89-285, Title III, Section 301 (a), October 22, 1965, 79 Statute 1032, for the following purposes:

(a) For landscape and roadside development within the rights of way of federal-aid highways of this state;

(b) For acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways; and

(c) For acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to federal-aid highway rights of way reasonably necessary to accommodate the traveling public.

History: En. Sec. 2, Ch. 286, L. 1967.

32-2424. Extent of interest acquired. The commission may acquire the fee simple or any lesser estate or interest as determined by the commission to be reasonably necessary to accomplish the purposes of this act. Such acquisition may be made by gift, purchase, or exchange.

History: En. Sec. 3, Ch. 286, L. 1967.

32-2425. Expenditure of funds. The commission shall expend only nonmatching funds authorized under the provisions of section 319 (b)

of the Federal Highway Beautification Act of 1965, as amended, in carrying out the authority granted by this act.

History: En. Sec. 4, Ch. 286, L. 1967. "This act shall be effective on and after July 1, 1967."

Effective Date

Section 5 of Ch. 286, Laws 1967 read

32-2426. Commission to fence along state highways through open range where livestock a hazard—gates—"open range" defined. (1) The highway commission shall fence the right of way of any part of the state highway system that is constructed and/or reconstructed, after the effective date of this act, through open range where livestock present a hazard to the safety of the motorist where a fence is constructed, adequate stock gates or stock passes, as necessary, shall be provided to make land on either side of the highway usable for livestock purposes.

(2) For the purpose of this act the term "open range" means all private and public lands in the state of Montana not inclosed by a fence of not less than four (4) wires in good repair but does not include herd districts as created and defined by section 46-1501, R. C. M. 1947.

History: En. Sec. 1, Ch. 311, L. 1969.

Title of Act

An act requiring the highway commission to fence highways that run through open range where livestock present a

safety hazard to the motorist; defining open range for the purpose of this act; and authorizing the highway commission to determine where in open range areas there is a sufficient safety hazard from livestock to warrant fencing.

32-2427. Commission to designate areas where fencing needed. The highway commission shall designate the open range areas where livestock present a sufficient safety hazard to the motorist to warrant fencing by the highway commission.

History: En. Sec. 2, Ch. 311, L. 1969.

CHAPTER 25—STATE HIGHWAY ENGINEER AND OTHER EMPLOYEES

Section 32-2501. State highway administrator and other employees.

32-2502. Commission employees—salaries.

32-2503. Division of maintenance and control.

32-2501. State highway administrator and other employees. (1) The commission may appoint an executive officer to be known as the "state highway administrator."

(2) The administrator shall be solely responsible to the commission and shall be charged with directing operation of the highway department and implementing the policies established by the commission.

(3) The administrator shall take and file the constitutional oath of office before entering upon the performance of his duties, and shall give a bond in such sum as the commission may require.

(4) The commission may remove the administrator at any time for cause.

(5) Wherever used in these codes the term "state highway engineer" or "engineer" shall mean "state highway administrator."

History: En. Sec. 4-201, Ch. 197, L. 1965; amd. Sec. 1, Ch. 312, L. 1967.

Compiler's Note

This chapter was designated as Part 2 of Chapter 4 of the Highway Code, entitled "State Highway Engineer and Other Employees."

Amendments

The 1967 amendment rewrote this section. Prior to amendment it read, "(1) The commission may appoint a professional engineer to be known as the 'state highway engineer,' and shall fix his salary; (2) The state highway engineer shall perform any acts or duties relating to the functions of the commission which the commission may impose; (3) The engineer shall take and file the constitutional oath of office before entering upon

the performance of his duties, and shall give a bond in such sum as the commission may require; (4) The commission may remove the engineer at any time for cause."

Separability Clause

Section 2 of Ch. 312, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Cross-References

Administrator's position abolished and functions transferred, sec. 82A-702(2).

Department abolished and functions transferred, sec. 82A-702(1).

32-2502. Commission employees—salaries. (1) The commission shall employ such personnel as it shall deem necessary and fix their compensation. Compensation shall be paid from funds deposited to the credit of the commission.

(2) The commission may, in its discretion, assign personnel for service to any county at the request of the board of county commissioners. The expense of this service shall be paid to the commission by the county.

History: En. Sec. 4-202, Ch. 197, L. 1965.

Application

Resolution adopted by state highway commission authorizing chief counsel thereof "to employ and engage such outside fee counsel as he, in his discretion

shall deem reasonable and necessary, to represent the Montana Highway Commission in whatever type of case arises," was proper and did not infringe on any powers, duties or responsibilities of state attorney general. *Woodahl v. State Highway Commission*, — M —, 465 P 2d 818.

32-2503. Division of maintenance and control. The commission may organize and operate a division of maintenance and control to maintain highways constructed by the state and, by co-operation with boards of county commissioners, such other highways as the commission may deem necessary.

History: En. Sec. 4-203, Ch. 197, L. 1965.

CHAPTER 26—DISTRIBUTION AND APPORTIONMENT OF HIGHWAY CONSTRUCTION FUNDS

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| Section | 32-2601. Distribution and use of proceeds of gasoline dealers' license tax. |
| | 32-2603. Districts for apportionment of commission funds. |
| | 32-2604. Construction or reconstruction of bridges. |
| | 32-2605. Apportionment of state construction funds. |
| | 32-2606. Apportionment of state funds to federal-aid primary highway system. |
| | 32-2607. Apportionment of state funds to federal-aid secondary highway system. |
| | 32-2608. Secondary highway information. |
| | 32-2609. Apportionment of state funds to federal-aid interstate highway system. |
| | 32-2610. Increases in expenditures. |
| | 32-2611. Apportionment of state funds to federal-aid urban highways. |

32-2601. Distribution and use of proceeds of gasoline dealers' license tax. All money received in payment of license taxes under the provisions of sections 84-1845 to 84-1855, except those amounts paid out of the state board of equalization's suspense account for gasoline tax refund shall be used and expended as provided in this section. So much of such money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by section 79-410. The legislative assembly hereby finds as a fact that the principal and interest and reserve requirements of bonds so authorized are a necessary cost of administering laws under which gasoline license taxes are derived, payment of highway obligations, and cost of construction, reconstruction, maintenance and repair of public highways, roads, streets, and bridges pursuant to the provisions of article XII, section 1b of the constitution of the state of Montana. Subject to the foregoing provision, six-tenths of one per cent (.6%) of all such money shall be deposited in the state park account in the earmarked revenue fund. All of the remainder of such money shall be used and expended by the state highway commission on the federal-aid highways in this state selected and designated under the provisions of the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to said federal highway system of federal-aid roads where such county seat is not on said system, and on such other roads as have been or may be authorized by the laws of Montana, and for collection of the license taxes and the enforcement of the Montana highway code, pursuant to the provisions of article XII, section 1b of the constitution of the state of Montana. It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of sections 32-2605 through 32-2607; provided that nothing in this act shall be construed to conflict with said federal-aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana.

Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds as provided in section 84-1818, R.C.M. 1947. The legislative assembly hereby finds as a fact that of all the fuel sold in the state of Montana for consumption in internal combustion engines, not less than six-tenths of one per centum (.6%) is used for propelling boats on waterways of this state.

History: En. Sec. 4-301, Ch. 197, L. 1965; amd. Sec. 1, Ch. 251, L. 1967; amd. Sec. 6, Ch. 356, L. 1971.

Compiler's Notes

This chapter was designated as Part 3 of Chapter 4 of the Highway Code, en-

titled "Distribution and Apportionment of Highway Construction Funds."

Section 84-1818, referred to in the last paragraph, was repealed by Sec. 20, Ch. 369, Laws 1969.

Amendments

The 1967 amendment reduced the percentage deposited in the state park account and the percentage specified in the second sentence of the second paragraph from one per cent to six-tenths of one per cent; substituted "section 32-2605 through 32-2607" for "sections 4-308 through 4-310" in the third sentence (now the sixth sentence) of the first paragraph; and added "except for the payment of refunds as provided in section 84-1818, R. C. M. 1947" at the end of the first sentence of the second paragraph.

The 1971 amendment inserted new first, second and third sentences in the first paragraph; inserted "Subject to the foregoing provision" at the beginning of the fourth sentence of the first paragraph; deleted "except that amount paid out of the state board of equalization's suspense account for gasoline tax refund" after "All other money received" at the beginning of the fifth sentence of the first paragraph; and made minor changes in phraseology and style.

Effective Date

Section 7 of Ch. 356, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

32-2602. Repealed.

Repeal

Section 32-2602 (Sec. 4-302, Ch. 197, L. 1965), relating to limitations on expenditures for administration, dissemination

of public information and engineering connected with highway construction, was repealed by Sec. 1, Ch. 251, Laws 1969, effective March 6, 1969.

32-2603. Districts for apportionment of commission funds. All money available to the commission for highway construction purposes shall be apportioned among these financial districts, each composed of the counties named:

- District 1. Lincoln, Flathead, Lake.
- District 2. Glacier, Toole, Liberty, Hill, Blaine.
- District 3. Phillips, Valley, Daniels, Sheridan, Roosevelt.
- District 4. McCone, Richland, Dawson, Prairie, Wibaux.
- District 5. Fergus, Garfield, Petroleum.
- District 6. Pondera, Teton, Chouteau, Cascade, Judith Basin.
- District 7. Lewis and Clark, Jefferson, Broadwater.
- District 8. Sanders, Mineral, Missoula, Ravalli, Granite, Powell.
- District 9. Beaverhead, Deer Lodge, Silver Bow, Madison.
- District 10. Park, Gallatin, Sweet Grass, Meagher, Wheatland.
- District 11. Golden Valley, Musselshell, Stillwater, Yellowstone, Carbon, Big Horn, Treasure.
- District 12. Rosebud, Custer, Fallon, Powder River, Carter.

History: En. Sec. 4-306, Ch. 197, L. 1965.

32-2604. Construction or reconstruction of bridges. (1) The commission may allocate from state construction moneys available for the federal-aid highway system up to one million dollars (\$1,000,000) in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the commission, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be expended:

(a) On primary bridges when the engineer's estimate of the cost of construction or reconstruction is in excess of five hundred thousand dollars (\$500,000).

(b) On secondary bridges when the engineer's estimate of the state's share of the cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of three (3) years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment provided for in section 4-309 [32-2606], and for the secondary system before the apportionment provided for in section 4-310 [32-2607].

History: En. Sec. 4-307, Ch. 197, L. 1965.

32-2605. Apportionment of state construction funds. Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds to the various federal-aid highway systems as may be required to match the amounts of federal aid available for expenditure on each respective system, provided that the state's share of the cost of final judgments in court awards made to construction contractors on state highway construction projects during the previous fiscal year may be deducted from funds available prior to the apportionments provided in this section and such cost shall be credited to the accounts of the highway system, financial district, county or urban city involved as an offset to the charges made to such accounts as a result of such final judgment. Said deductions may be made only when the amount of such judgments would prohibit or seriously impair the highway construction program in a financial district, county or urban city.

History: En. Sec. 4-308, Ch. 197, L. 1965; amd. Sec. 1, Ch. 283, L. 1971.

Amendments

The 1971 amendment added the proviso to the first sentence; and added the second sentence.

Effective Date

Section 2 of Ch. 283, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

32-2606. Apportionment of state funds to federal-aid primary highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall determine the amount of incompletd mileage of the federal-aid primary system within each of the financial districts.

(a) As a basis for determination of incompletd mileage, the commission shall compare the present condition of the system with the latest

approved state standards. Any mileage failing to meet those standards shall be included in the determination as partially completed. The proportion of completion shall be determined by estimating the amount of work which must be performed to complete the highway.

(2) The commission shall then compute the ratio between the incompleting mileage in each district and the total incompleting mileage of the federal-aid primary system in the state.

(3) The commission shall then apportion available state construction funds to the federal-aid primary system in each district on the basis of the computed ratio.

History: En. Sec. 4-309, Ch. 197, L. 1965.

32-2607. Apportionment of state funds to federal-aid secondary highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) One-fourth ($\frac{1}{4}$) in the ratio of land area in each district to the total land area in the state.

(b) One-fourth ($\frac{1}{4}$) in the ratio of the rural population in each district to the total rural population in the state.

(c) One-fourth ($\frac{1}{4}$) in the ratio of the rural road mileage in each district to the total rural road mileage in the state.

(d) One-fourth ($\frac{1}{4}$) in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county therein on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, expenditures in any county may exceed the amount apportioned to that county to the extent of three (3) times the amount of the last apportionment thereto. The amount of any such excess expenditures shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) Rural population—Total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the latest federal census.

(i) Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) Rural road mileage—All road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system.

(i) Rural road mileage reported by the road inventory of the commission shall be used in determining rural road mileage.

(c) Value of rural lands—Includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the state board of equalization.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the commissioner of state lands and investments.

(iii) The average value of privately owned lands shall be the average value of state-owned lands, if the actual value is not available.

History: En. Sec. 4-310, Ch. 197, L.
1965.

32-2608. Secondary highway information. On or before August 30 of each year, the commission shall inform each board of county commissioners of: (1) The total amount of secondary highway funds and the amount apportioned to each county.

(2) The location of proposed secondary highway projects when the information is available.

(3) Such other matters regarding secondary highway construction as the commission deems advisable and of interest to the counties.

History: En. Sec. 4-311, Ch. 197, L.
1965.

32-2609. Apportionment of state funds to federal-aid interstate highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the commission in accordance with the provisions of the Federal-Aid Highway Act of 1956, as amended.

History: En. Sec. 4-312, Ch. 197, L.
1965.

32-2610. Increases in expenditures. (1) The commission may increase the expenditures made in any financial district to the extent of:

(a) Fifteen per cent (15%) more than the amount of money allocated to such district in the latest year for the federal-aid primary system or the federal-aid secondary system.

(b) One hundred per cent (100%) more than the amount of money allocated to such district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to any district for the next succeeding fiscal year shall be decreased by an amount equal to any increased expenditures.

History: En. Sec. 4-313, Ch. 197, L. 1965.

32-2611. Apportionment of state funds to federal-aid urban highways.

(1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over five thousand (5,000) population in the ratio of urban population in each such city to the total urban population in all cities over five thousand (5,000) population in the state.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over five thousand (5,000) population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any city may exceed the amount apportioned to that city. The amount of any such excess expenditures shall be deducted from future apportionments to that city.

History: En. Sec. 4-314, Ch. 197, L. 1965.

CHAPTER 27—MONTANA TOLL BRIDGE AUTHORITY

- Section** 32-2701. Creation of authority—members—salary—officers—seal.
 32-2702. Powers of authority.
 32-2703. Resolution—estimates of costs.
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 32-2715. Limitations on building bridges near toll bridges.
 32-2716. Payment of bonds—free bridge.

32-2701. Creation of authority — members — salary — officers — seal.

(1) There is hereby created the Montana toll bridge authority, composed of members of the commission, who shall receive no compensation other than that received as members of the commission.

(2) The chairman of the commission shall be the chairman of the authority, and the state highway engineer shall be the secretary-treasurer. All contracts, bonds, and other instruments shall be executed in the name of the authority by the chairman and attested by the secretary-treasurer.

(3) The authority shall adopt a seal bearing its name which shall be affixed to such bonds, instruments, and records as the authority or the chairman may direct.

History: En. Sec. 4-401, Ch. 197, L. 1965.

Cross-References

Toll bridge authority abolished and functions transferred, sec. 82A-702(3).

Compiler's Note

This chapter was designated as Part 4 of Chapter 4 of the Highway Code, entitled "Montana Toll Bridge Authority."

32-2702. Powers of authority. (1) The authority shall adopt rules and regulations for its own government and for the administration of this part [chapter] and the execution of the powers and duties hereby conferred.

(2) The authority may establish and construct a toll bridge or toll bridges upon any of the public highways of this state, together with approaches, wherever found and determined to be necessary for advantageous, and practicable for crossing any stream or body of water.

(3) The authority may issue toll bridge revenue bonds to pay the cost of any toll bridge.

History: En. Sec. 4-402, Ch. 197, L. 1965.

32-2703. Resolution—estimates of costs. (1) Whenever the authority finds and determines that the construction of any toll bridge is necessary, advantageous, and practicable, it shall adopt a resolution making such finding and determination and declaring that public convenience and necessity require the construction of the toll bridge.

(2) The resolution shall contain preliminary estimates of:

(a) The cost of construction.

(b) The amount of money to be raised by the issuance of revenue bonds.

(c) The probable amounts of money, property materials, or labor, if any, to be contributed from other sources in aid of construction.

(3) The authority shall also estimate the costs of maintaining, repairing, and operating the toll bridge, and the revenues to be derived from it.

(4) No toll bridge shall be constructed unless the authority first finds and determines that the probable revenues will be sufficient to pay the costs of maintaining, repairing, and operating it, and to pay the principal and interest on revenue bonds issued to pay its costs.

(5) The failure of the authority to make the estimates required by

this section or to make them in proper form shall in no way affect the validity or enforceability of any revenue bonds.

History: En. Sec. 4-403, Ch. 197, L. 1965.

32-2704. Limitations on placing of toll bridges. (1) No toll bridge shall be authorized or constructed over or across any stream within a radius of fifty (50) miles of either side of any free public bridge existing on that stream unless there shall first have been filed with the authority a petition requesting its construction.

(2) The petition shall be signed by:

(a) Not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of the county in which the toll bridge is proposed to be constructed; or

(b) Not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of both counties when the toll bridge is proposed to be constructed upon a stream which constitutes the boundary between two (2) counties.

History: En. Sec. 4-404, Ch. 197, L. 1965.

32-2705. Contents of petition. (1) The petition shall contain a statement showing the location of the proposed toll bridge and the locations of all free public bridges existing upon the same stream within a radius of fifty (50) miles of the proposed toll bridge. It shall also contain a concise statement of facts showing that the proposed construction is necessary, advantageous, and practicable.

(2) Several copies of the petition identical in form may be circulated. Each person circulating a copy must attach his affidavit that the signatures appearing thereon are genuine and that the signers knew the contents at the time of signing.

(3) All copies from each county shall be attached together as to form a single petition. The petition shall have attached to it before it is filed with the authority a certificate of the county clerk and recorder showing whether or not it has been signed by not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of the county.

(4) The county clerk and recorder shall transmit the petition to the authority.

History: En. Sec. 4-405, Ch. 197, L. 1965.

32-2706. Action by authority on petition. (1) The authority shall meet and consider the petition within thirty (30) days after it is filed. It shall be the sole judge of the sufficiency of the petition.

(2) If the authority finds that the petition bears the required number of signatures and is in proper form, and finds and determines that the

construction of the proposed toll bridge is necessary, advantageous, and practicable, it shall adopt a resolution making that finding and determination. The resolution shall also contain the estimates and data required by section 4-403 [32-2703].

(3) The authority's finding of the sufficiency of the petition shall be conclusive in favor of any innocent holder of bonds issued as a result of the presentation of the petition.

History: En. Sec. 4-406, Ch. 197, L.
1965.

32-2707. Powers of authority in connection with toll bridge bond issues. (1) In connection with the issuance and in order to secure the payment of toll bridge bonds, the authority may:

(a) Pledge all or any part of the tolls, income, profit, and revenue of any such toll bridge, and covenant to pay such tolls, income, profit, and revenue into appropriate funds.

(b) Covenant to fix and establish such tolls, rates, and charges as will provide at all times enough funds to:

(i) Pay all costs of operation, maintenance, and repairs of the toll bridge.

(ii) Meet and pay the principal of and interest on all toll bridge bonds as they severally become due and payable.

(iii) Create such reserves for the principal and interest of such bonds and to meet contingencies in operation and maintenance as the authority shall determine.

(c) Make such additional covenants as to tolls, rates and charges as it shall deem necessary to secure the payment of bonds.

(2) No truck, trailer, or automobile licensed in the name of the state of Montana or the United States or any branch or department thereof shall be required to pay for crossing any toll bridge.

History: En. Sec. 4-407, Ch. 197, L.
1965.

32-2708. Reserve and contingency funds—deposit. (1) The authority may create a special fund or funds, in addition to those required by this part [chapter], for moneys reserved for principal and interest on bonds and for meeting contingencies in the operation and maintenance of any toll bridge.

(2) It may determine the depositary or depositaries in which such funds shall be deposited and the manner in which such deposits shall be secured. Any bank or trust company incorporated under the laws of this state may act as a depositary and may furnish such indemnifying bonds or pledge such securities as may be required by the authority.

History: En. Sec. 4-408, Ch. 197, L.
1965.

32-2709. Additional bond terms permitted. (1) The authority may:

(a) Provide for replacement of lost, destroyed, or mutilated bonds.

(b) Covenant against extending the time for the payment of the principal of or interest on any toll bridge bonds, directly or indirectly in any manner.

(c) Prescribe and covenant as to the events of default and terms and conditions upon which any or all toll bridge bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(d) Covenant as to the rights, liabilities, powers, and duties arising upon the breach of any covenant, condition, or obligation.

(e) Vest in a trustee or trustees the right to enforce any covenant made to secure or to pay toll bridge bonds, provide for their powers and duties, limit their liabilities, and provide the terms and conditions upon which the trustee or trustees or the holders or any proportion of them may enforce any such covenant.

(2) The authority may make such covenants and do any and all acts and things necessary or convenient or desirable in order to secure toll bridge bonds or to make them more marketable, notwithstanding that such covenants, acts or things may not be enumerated or expressly authorized. The legislative assembly intends to grant to the authority power to do all things in the issuance of toll bridge bonds and in providing for their security that may not be inconsistent with the constitution.

History: En. Sec. 4-409, Ch. 197, L. 1965.

32-2710. Toll charges—fixing—expiration. (1) The authority may fix and change rates of toll and other charges for all toll bridges built under the provisions of this part [chapter]. The rates and charges shall at all times be fixed at rates which will yield sufficient annual revenue to pay annual operating and maintenance expenses, to redeem and pay the principal of and interest on all bonds as they severally come due, and to create such reserves as the authority shall deem necessary.

(2) All tolls and other revenue shall constitute a trust fund for the security and payment of toll bridge bonds. They shall not be pledged for any other purpose as long as any of the bonds are outstanding and unpaid.

History: En. Sec. 4-410, Ch. 197, L. 1965.

32-2711. Revenue fund—sinking fund. (1) The authority shall adopt rules and regulations for the collection of tolls and the deposit thereof to the credit of the appropriate toll bridge revenue fund, and for the transfer therefrom to the appropriate sinking fund of money for the payment and redemption of bonds as they severally mature.

(2) The money remaining in each separate toll bridge revenue fund after providing the amount required for interest and redemption of bonds

shall be held and applied in accordance with the proceedings relating to the authorization of the bonds.

History: En. Sec. 4-411, Ch. 197, L. 1965.

32-2712. Construction. Whenever funds are available for the construction of any toll bridge, the commission shall let contracts by competitive bidding, after such notice and upon such terms as it shall prescribe.

History: En. Sec. 4-412, Ch. 197, L. 1965.

32-2713. State highway engineer—duties. The engineer shall have full charge of the construction, operation, and maintenance of all toll bridges authorized by the authority. Under the supervision of the authority, and subject to its rules and regulations, the engineer shall have charge of the collection of all tolls.

History: En. Sec. 4-413, Ch. 197, L. 1965.

32-2714. Annual statement—records. (1) The engineer shall keep full and complete accounts for each toll bridge constructed. Each year he shall cause to be prepared and filed in the office of the secretary of state a balance sheet and income and profit and loss statement showing the financial condition of each toll bridge.

(2) All books, records, and papers relating to toll bridges shall at all reasonable times [to] be open to the inspection of any citizen of the state.

History: En. Sec. 4-414, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted brackets around the word "to" in subsection (2) to denote surplusage.

32-2715. Limitations on building bridges near toll bridges. So long as any of the bonds issued for the construction of any toll bridge are outstanding and unpaid, there shall not be erected, constructed, or maintained any other bridge for public use over or across the stream upon which the toll bridge is located within a distance of twenty (20) miles on either side of the toll bridge. This prohibition does not apply to bridges in existence and being used at the time of the issuance of such bonds.

History: En. Sec. 4-415, Ch. 197, L. 1965.

32-2716. Payment of bonds—free bridge. When the bonds issued for the purpose of paying the cost of any toll bridge are retired, the cost of construction having thereby been repaid in full, the bridge shall thereafter be maintained and operated by the commission as a free bridge. The expense of any surveys and reports paid from the funds of the commission shall then be deemed fully repaid.

History: En. Sec. 4-416, Ch. 197, L. 1965.

CHAPTER 28—BOARD OF COUNTY COMMISSIONERS
RESPONSIBILITY FOR COUNTY ROADS

- Section 32-2801. Powers and duties of county commissioners respecting county roads.
 32-2802. Right of way—contracts—control of traffic.
 32-2803. Plat books—surveyor—employees.
 32-2804. County contracts with state or federal agency.
 32-2805. Inspection of roads and construction work—compensation.
 32-2806. Purchase of machinery and materials.
 32-2807. Use of county road machinery.
 32-2808. Width of road.
 32-2809. Highways to follow subdivision or section lines.
 32-2810. Auto passes excluding livestock.
 32-2811. Auto passes on county roads.
 32-2812. Limit on amount expended in road district.
 32-2813. Reseeding of right of way areas.
 32-2814. County supervisors to control weeds and exterminate weed seeds—charges.
 32-2815. Board and others to furnish information.

32-2801. Powers and duties of county commissioners respecting county roads. (1) Each board of county commissioners shall have general supervision over the county roads within the county. The board may, in its discretion, divide the county into suitable road districts, and place each district in charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district. If the board does not divide the county into districts, the county itself shall constitute one road district.

(2) Each board shall cause to be surveyed, viewed, laid out, recorded, opened, worked, and maintained such county roads as are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor.

(4) Each board may, in its discretion, cause to be done whatever may be necessary for the best interest of the county roads and the road districts.

(5) Each board shall make such reports relating to roads under its supervision as may be requested by the commission.

History: En. Sec. 5-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 28 to 31, inclusive, of this title were designated as Chapter 5 of the

Highway Code, entitled "County Administration." This chapter was designated as Part 1 of Chapter 5, entitled "Board of County Commissioners Responsibility for County Roads."

32-2802. Right of way—contracts—control of traffic. (1) Each board shall contract, agree for, purchase, or otherwise lawfully acquire right of way for county roads over private property. It may institute proceedings under sections 93-9901 to 93-9926, paying for such right of way from the county road fund. Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Subject to the limitations and restrictions provided in the codes for the letting of contracts, each board may let by contract the construction, maintenance and improvement of county roads, and the construction,

maintenance, or repair of bridges when the amount of work to be done exceeds the sum of one thousand dollars (\$1,000).

(3) Subject to the limitations and restrictions provided in the constitution and codes, each board may issue bonds upon the faith and credit of the county for the construction or improvement of county roads, state highways, and bridges.

(4) Each board may, in its discretion, limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part thereof, when it is necessary in order to preserve or repair such roads.

History: En. Sec. 5-102, Ch. 197, L. 1965.

32-2803. Plat books — surveyor — employees. (1) Each board may, in its discretion, order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable plat books. Each board shall have recorded therein with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map thereof, and a record of all proceedings with reference thereto.

(2) Each board may, in its discretion, employ a competent road supervisor, who shall serve during the pleasure of the board. Under the direction and control of the board he shall:

(a) Prescribe the times and places for all work to be done on the county roads.

(b) Report any delinquency or inefficiency of any person employed on any road.

(c) Perform such other duties as may be prescribed by the board.

(3) In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(a) Nothing in this section shall be construed to alter or repeal the provisions of sections 5-308 and 5-309 of this chapter.

(4) In counties without a county surveyor, each board may appoint a county road superintendent. He shall have such duties, powers, and responsibilities as are set forth in part 3 (b) of this chapter (chapter 30 of this title)."

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967.

Compiler's Note

Chapter 197, Laws 1965, the Highway Code, contained no sections 5-308 and 5-309 as referred to in paragraph (3) (a) of this section.

Amendments

The 1967 amendment added "In coun-

ties without a county surveyor" at the beginning of the first sentence of subsection (4), and added "chapter 30 of this title" within parentheses at the end of the section.

Effective Date

Section 3' of Ch. 274, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

32-2804. County contracts with state or federal agency. Whenever construction of farm to market, secondary, or feeder roads is to be

financed in whole or in part by federal funds, and the United States secretary of commerce shall affirmatively find that some method other than competitive bidding is in the public interest, each board may:

(1) Enter into and contract jointly or independently with either the commission, the bureau of public roads, or any other federal agency to:

(a) Acquire rights of way.

(b) Survey and construct such roads.

(c) Do any other thing essential and practical in securing such roads by force account, unit price, or otherwise.

History: En. Sec. 5-104, Ch. 197, L. 1965.

32-2805. Inspection of roads and construction work—compensation.

(1) The board may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) The person or persons making such inspections shall receive the sum of twenty dollars (\$20) per day and actual expenses. The claims shall be audited and allowed in the same manner as other claims against the county.

(3) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967.

ments to county surveyors and members of county boards of commissioners under subsection (2) from \$15 to \$20 per day.

Amendments

The 1967 amendment increased pay-

32-2806. Purchase of machinery and materials. (1) Out of the county road fund, each board may:

(a) Purchase and operate grading and other machinery necessary or desirable for the improvements of the county roads.

(b) Acquire deposits or quarries of suitable road-building material by purchase, condemnation, or lease.

(2) Each board may also acquire such road-building material by gift.

(3) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads, may be sold by the board at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county. The proceeds of any such sale shall be paid into the county road fund.

History: En. Sec. 5-106, Ch. 197, L. 1965.

32-2807. Use of county road machinery. Each board may, in its discretion, authorize and permit the use of any county highway or road

machinery or equipment when not in use in any district, in connection with the construction, repair and maintenance of streets, avenues and alleys within any incorporated city or town of four thousand (4,000) population or less located in the county.

History: En. Sec. 5-107, Ch. 197, L. 1965.

32-2808. Width of road. (1) The width of all county roads, except bridges, alleys, or lanes, must be sixty (60) feet unless a greater or smaller width is ordered by the board on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least twenty (20) feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road already established or used as such.

History: En. Sec. 5-108, Ch. 197, L. 1965.

Applicability

Statute was intended by legislature to

apply only to public roads which were laid out by official act of proper public officials and was never intended to apply to prescriptive easements. *State v. Portmann*, 149 M 91, 423 P 2d 56.

32-2809. Highways to follow subdivision or section lines. County roads must be laid out and opened when practicable upon subdivision or section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En. Sec. 5-109, Ch. 197, L. 1965.

32-2810. Auto passes excluding livestock. Where a county road connects with a state or federal highway which is fenced on both sides, the board may construct and maintain extensions of the fence across the right of way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

History: En. Sec. 5-110, Ch. 197, L. 1965.

32-2811. Auto passes on county roads. Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: En. Sec. 5-111, Ch. 197, L. 1965.

32-2812. Limit on amount expended in road district. The expenditures in any road district for labor and equipment, together with the compensation to be paid to the supervisor, shall not exceed the sum apportioned quarterly by the board to that district. However, if that sum is not sufficient, the board may appropriate any amount from the county road

fund necessary for the use of such district. The full amount of all road taxes collected in remote districts shall be expended annually by the county commissioners on the roads within such districts.

History: En. Sec. 5-112, Ch. 197, L. 1965.

32-2813. Reseeding of right of way areas. (1) Whenever the natural sod cover on right of way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board shall require that such disturbed areas be seeded to an adaptable perennial grass or combination of perennial grasses and legumes. Every effort shall be made to establish a sod cover on the disturbed area.

(2) All seed used shall meet certified standards.

(3) Time and method of seeding, fertilizing practices, and grass species shall be those recommended by the Montana extension service.

History: En. Sec. 5-113, Ch. 197, L. 1965.

32-2814. County supervisors to control weeds and exterminate weed seeds—charges. The board of weed control and weed seed extermination supervisors shall control noxious weeds on the county roads. If the commission does not control noxious weeds on state and federal highways in any county, the supervisors shall control them. Upon presentation by the supervisors of a verified account of the expenses incurred, the costs thereof shall be paid by the commission.

History: En. Sec. 5-114, Ch. 197, L. 1965.

32-2815. Board and others to furnish information. The board and road supervisor of any county, and all other officers who may have the care and supervision of the public highways and bridges, shall, upon the written request of the commission, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.

History: En. Sec. 5-115, Ch. 197, L. 1965.

CHAPTER 29—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR BRIDGES AND FERRIES

- Section 32-2901. County to maintain bridges.
 32-2902. Bridges over streams in cities and towns.
 32-2903. Election to determine question of construction—bonds—special levy.
 32-2904. Removal of obstructions and repair of bridges.
 32-2905. Bridges under control and management of board—police regulations.
 32-2906. Construction and maintenance of bridges crossing county lines.
 32-2907. Ferries uniting two counties—report of ferrymen on joint ferries.

32-2901. County to maintain bridges. Each board shall maintain all public bridges other than those maintained by the commission.

History: En. Sec. 5-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 5 of the Highway Code, entitled "Board of County Commissioners Responsibility for Bridges and Ferries."

32-2902. Bridges over streams in cities and towns. (1) Each board shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half ($\frac{1}{2}$), to be determined by the board, of the cost of planking, replanking, paving or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

History: En. Sec. 5-202, Ch. 197, L.
1965.

32-2903. Election to determine question of construction—bonds—special levy. (1) Before undertaking the construction of any bridge the cost of which shall exceed ten thousand dollars (\$10,000), in any city or town, the board shall submit to the qualified electors of the county, at a general or special election, the question of whether the bridge shall be constructed and its cost paid by the county.

(2) If the electors vote in favor of construction, the board may issue and sell bonds of the county to the amount authorized for the construction of the bridge. Bonds shall be issued under such regulations as apply to other bonds of the county.

(3) The bridge shall be constructed using the proceeds of such sale.

(4) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in section 7-104 [32-3604] of this code.

History: En. Sec. 5-203, Ch. 197, L.
1965.

32-2904. Removal of obstructions and repair of bridges. (1) Whenever any county road becomes obstructed, or any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board or the county surveyor, if he is in charge, shall remove the obstruction or repair the bridge, upon being notified thereof.

(2) Nothing in this section shall be construed as holding the board, or any member, responsible or liable for anything other than willful, intentional neglect or failure to act.

History: En. Sec. 5-204, Ch. 197, L.
1965.

32-2905. Bridges under control and management of board—police regulations. (1) The board shall manage and control all bridges referred to in this part [chapter]. It shall direct the method and time of making repairs, planking, replanking, paving and repaving.

(2) The board may also make repairs to stream beds and water-courses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

(3) Such bridges and all persons on them shall be subject to the

reasonable police regulations of the city or town in which any such bridge is situated.

History: En. Sec. 5-205, Ch. 197, L.
1965.

32-2906. Construction and maintenance of bridges crossing county lines. Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L.
1965.

32-2907. Ferries uniting two counties—report of ferrymen on joint ferries. (1) When a public ferry, if constructed would unite two counties, the boards may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ferrymen are employed on joint ferries, they shall report quarterly to each board, giving such information as each board may require.

History: En. Sec. 5-207, Ch. 197, L.
1965.

CHAPTER 30—COUNTY ROAD SUPERINTENDENT

- Section 32-3001. County road superintendent—appointment and compensation.
32-3002. Duties of county road superintendent.
32-3003. Accounts and statements.
32-3004. Examination of superintendent's report—warrant for claims.
32-3005. Equipment, tools, and implements for use of superintendent.
32-3006. Employment of laborers—hiring of equipment.
32-3007. Construction of drains and ditches—penalty for obstructions.

32-3001. County road superintendent—appointment and compensation. (1) After his appointment, the county road superintendent shall serve at the pleasure of, and under the direction and control of the board. He shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of his duties.

(2) He shall receive such compensation as is determined by the board.

History: En. Sec. 5-301, Ch. 197, L.
1965.

Compiler's Note

This chapter was designated as Part 3 of Chapter 5 of the Highway Code, entitled "County Road Superintendent."

32-3002. Duties of county road superintendent. (1) Under the direction and supervision of the board, the superintendent shall furnish plans and specifications for highway or bridge work. He shall be chairman of all boards of road viewers.

(2) Under such direction and supervision, he shall also:

(a) Take charge of all roads, bridges and causeways under the jurisdiction of the county.

(b) Open all new roads when they are duly established and ordered to be opened by the board.

(c) Perform at the time and in the manner directed by the board whatever shall be lawfully directed by the board concerning the public highways under the jurisdiction of the county.

History: En. Sec. 5-302, Ch. 197, L.
1965.

32-3003. Accounts and statements. The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. He shall give to each person performing work, or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid therefor.

History: En. Sec. 5-303, Ch. 197, L.
1965.

32-3004. Examination of superintendent's report—warrant for claims. At the first monthly or quarterly meeting held after filing of the superintendent's report, the board shall examine it. Upon the presentation of any certificate issued by the superintendent, and verification of it by the holder, as in other cases of claims against the county, the board shall cause to be issued a warrant for the amount of the certificate drawn on the treasurer against the county road fund.

History: En. Sec. 5-304, Ch. 197, L.
1965.

32-3005. Equipment, tools, and implements for use of superintendent. Upon the requisition of the superintendent, the board shall furnish any equipment, tools, and implements necessary, and pay for them out of the county road fund. The superintendent shall preserve the equipment, tools, and implements, and shall not allow them to be used except on public highways. At the expiration of his term of office, or upon his removal therefrom, he must turn over all equipment, tools, and implements to his successor or to the board.

History: En. Sec. 5-305, Ch. 197, L.
1965.

32-3006. Employment of laborers—hiring of equipment. Whenever it is necessary, the superintendent may employ suitable laborers, hire equipment and implements, and contract as to the wages and prices to be paid. Wages and prices shall not exceed rates established by the board for an eight-hour day.

History: En. Sec. 5-306, Ch. 197, L.
1965.

32-3007. Construction of drains and ditches—penalty for obstructions. (1) The superintendent may open or construct drains and ditches for making and preserving roads and highways, doing as little injury as may be possible to the adjoining land.

(2) Any person who stops or obstructs any drain or ditch so constructed forfeits the sum of fifty dollars (\$50.00), to be recovered by the superintendent or board in a civil action in any court of competent jurisdiction.

(3) Any person aggrieved by the act of the superintendent may make a written complaint to the board, which if it finds the complaint valid, may pay damages out of the county road fund.

History: En. Sec. 5-307, Ch. 197, L. 1965.

CHAPTER 31—LOCAL IMPROVEMENT DISTRICTS

- Section 32-3101. Duty of board to construct roads and levy assessments.
 32-3102. Petition for construction or improvement of road.
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 32-3129. Auditing and payment of claims and accounts.
 32-3130. Estimates of work completed—payment therefor.
 32-3131. Disposition of residue of funds.

32-3101. Duty of board to construct roads and levy assessments. (1) Upon proper petition, as hereinafter provided, the board shall cause county roads to be laid out, opened, constructed and improved.

(2) The board shall levy and cause to be collected an assessment upon all parcels of land specifically benefited by the laying out, opening, construction, or improvement for paying the costs thereof.

(3) The assessment shall be a first lien upon the land liable, prior and superior to all other liens and encumbrances.

(4) The board shall provide for the payment of assessments either on the immediate payment plan or by installments.

(5) The board shall issue local improvement district bonds and coupons for each installment.

History: En. Sec. 5-401, Ch. 197, L. 1965. **Compiler's Note**
This chapter was designated as Part 4 of Chapter 5 of the Highway Code, entitled "Local Improvement Districts."

32-3102. Petition for construction or improvement of road. (1) A petition for laying out, opening, constructing, or improving a county road may be presented to the board by the owners of two-thirds ($\frac{2}{3}$) of the lineal feet of land fronting on the proposed or existing road.

(a) If any such land stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian shall be equivalent to the signature of the owner.

(2) The petition must set forth:

(a) That the petitioners are such owners and that they desire the petitioned action.

(b) The kind and nature of the improvement desired.

(c) The mode of payment of the assessments to be levied for defraying the cost thereof.

(d) The portion of the costs which the district, if formed, will assume and pay.

(i) It must not be less than thirty-five per cent (35%) of the costs, and may be as much as seventy-five per cent (75%) thereof.

History: En. Sec. 5-402, Ch. 197, L. 1965.

32-3103. Resolution of public interest. Upon receipt of the petition, the board shall pass a resolution that the public interest demands the laying out, opening, constructing or improving of the road, or part thereof, described in the resolution. The description shall not include any portion of any road within the boundaries of any city or incorporated town.

History: En. Sec. 5-403, Ch. 197, L. 1965.

32-3104. Proceedings upon receipt of petition. (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or his deputy and the petitioners and all owners upon whose lands special assessments will be levied.

(2) The county clerk shall immediately notify the county road superintendent of the meeting and shall cause a notice thereof to be printed in the newspaper published nearest to the vicinity of the road. The notice shall be published for three (3) consecutive weeks prior to the time of the meeting.

(3) The notice shall state the time and place of the meeting, and in general terms the kind of construction or improvement sought, and the places of beginning, intermediate points and termination.

History: En. Sec. 5-404, Ch. 197, L. 1965.

32-3105. Proceedings at meeting. (1) The petitioners and all owners of land fronting on the road or land owned within two miles on either side of it upon which special assessments will be levied may meet with the superintendent or his duly appointed deputy.

(2) The superintendent or his deputy, or, in their absence one of the landowners present, shall preside. Those present shall elect three as a committee of supervisors; at least one of them shall be a petitioner.

(a) A majority of the owners present and voting shall be sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local assessment district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors.

(4) The superintendent or his deputy may administer the oath, or it may be administered by anyone so authorized by law.

History: En. Sec. 5-405, Ch. 197, L. 1965.

32-3106. Duties of committee and road superintendent. (1) The committee and the surveyor or his deputy shall:

(a) Immediately view, examine, and survey the road petitioned for.

(b) Examine and determine the lands which will be specifically benefited by the road and which should be included within the district that is to be assessed.

(c) Ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road.

(d) Obtain, if possible, without cost the release in writing of each person of his claim for such damage or injury.

(e) Arrange, when necessary, for a release to be given for such amount as may be fair and reasonable.

(2) The road superintendent shall without delay prepare plans and specifications and cost estimates. He shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands shall be that which appears on the last annual assessment roll of the county for the levying of general taxes.

History: En. Sec. 5-406, Ch. 197, L. 1965.

32-3107. Report of county road superintendent—order creating district. (1) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, he shall make a detailed report.

(a) The report shall state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.

(2) The whole amount of damages, costs and expenses shall not exceed fifty per cent (50%) of the total assessed valuation of the parcels of land in the district, as determined from the last annual assessment roll of the county. If it does not, the board shall make and enter upon the report an order that the road be made.

(3) That order shall create the local improvement district to be known and designated as local improvement district No. _____ in _____ county, Montana. Copies of the report shall be kept in the offices of the board and road superintendent.

History: En. Sec. 5-407, Ch. 197, L.
1965.

32-3108. Sharing of costs—order of board. The board may enter an agreement to share costs with the district when the petition presented states the proportion which the district will pay. After such an agreement has been made, specifying the amount to be paid by the district and the amount to be paid from county funds, the board shall make an order to that effect on the records of its proceedings.

History: En. Sec. 5-408, Ch. 197, L.
1965.

32-3109. Payment of county's share of expense. The board shall order paid from county funds the share of the county for construction or improvement of the road. However, payment shall not exceed sixty-five per cent (65%) of the cost. This amount shall be a proper charge against the county and shall be paid by the treasurer upon warrants duly drawn as ordered by the board.

History: En. Sec. 5-409, Ch. 197, L.
1965.

32-3110. Formation and boundaries of district. (1) The boundaries of each local assessment district shall be fixed as follows:

(a) The lands extending from the center of the road one-half ($\frac{1}{2}$) mile on each side thereof [measuring one (1) mile in width] shall constitute "Part One" of the district.

(b) The lands embraced within an area one (1) mile wide on each side of Part One shall constitute "Part Two" of the district.

(c) The lands embraced within an area one (1) mile wide on either side of Part Two shall constitute "Part Three" of the district.

(2) Each of the parts shall extend the full length of the proposed road and one mile beyond the terminus unless the committee shall otherwise provide.

History: En. Sec. 5-410, Ch. 197, L.
1965.

32-3111. Assessment of lands in each part—lien. (1) Each separate parcel of land in Part One shall be assessed for its proportion of forty-five per cent (45%) of the whole cost payable by the district.

(2) Each separate parcel of land in Part Two shall be assessed for its proportion of thirty-five per cent (35%) of the cost.

(3) Each separate parcel of land in Part Three shall be assessed for its proportion of twenty per cent (20%) of the cost.

(4) All of the lands in each part shall be subject to a lien for all of the assessments of that part until they have been paid.

History: En. Sec. 5-411, Ch. 197, L.
1965.

32-3112. Method of assessment. (1) The assessments upon the parcels of land in each part shall be made ratably according to the front-foot plan, as follows:

(a) The unit used to determine the proportion of assessment shall be one foot of longitude measured along the road constituting the center of the district and extending latitudinally across the part.

(b) Because units in each part may not be equal, assessment rates for each part shall be determined for eight hundred eighty (880) square feet of surface.

(2) If the areas of the parts are not equal, the rates fixed for parts one, two, and three shall be related to each other as are the numbers forty-five (45), thirty-five (35) and twenty (20), respectively.

History: En. Sec. 5-412, Ch. 197, L.
1965.

32-3113. Appointment of inspector—compensation of inspector and committee. (1) The committee and road superintendent together shall appoint some suitable and competent person other than they to act as an inspector of the work. He shall be upon the work at all times during its progress and inspect the performance thereof. He shall report to and be under the supervision of the superintendent.

(2) He shall be paid for his services as inspector at the rate of five dollars (\$5) per day for the time he is actually engaged thereon.

(3) Each supervisor shall be paid the sum of three dollars (\$3) per day for the time the committee is actually engaged in meeting and acting with the superintendent and in transacting the business of the district. No mileage or other expense money shall be paid.

History: En. Sec. 5-413, Ch. 197, L.
1965.

32-3114. Construction by county—lien. (1) If bids for construction and improvement are rejected by the committee, the district may contract with the board to construct or improve the road.

(2) Roads in districts may be constructed and improved in the first instance at the entire expense of the county, and the county may, as far as practicable, take the place of a private contractor.

(3) When the county has paid for construction and improvements, it shall be recompensed for by the district in accordance with their agreement. If bonds were issued under the installment plan, they shall become the property of the county.

(4) The county shall have the same lien as if the contract had been let to a private contractor.

History: En. Sec. 5-414, Ch. 197, L. 1965.

32-3115. Apportionment of costs—assessment roll—contents. (1) When the order for improvement and construction has been made by the board, the committee and the county assessor shall apportion the estimated cost and expenses to the land in the district.

(2) Within thirty (30) days before the letting of the contract, the assessor shall report to and file with the board and the treasurer an assessment roll in duplicate. It shall contain the description of each parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known. In no case shall a mistake in the name of the owner be fatal to the assessment when the description of the land is correct.

History: En. Sec. 5-415, Ch. 197, L. 1965.

32-3116. Notice—confirmation—errors. (1) As soon as the assessment roll is reported and filed, the board shall publish notice for three consecutive weeks in the newspapers in which notice of invitations for bids for the contract was published. The notice shall notify all persons interested that the assessment roll has been filed, and require them to appear at the office of the board at the county seat at a time not less than fifteen (15) days from the date of the last publication of the notice to make objections.

(2) At the time fixed, the board and the assessor shall meet. If no objections have been filed, the board shall make an order confirming the assessment roll. If written objections, properly verified, have been filed, the board shall hear the objections, receiving any testimony from any party involved.

History: En. Sec. 5-416, Ch. 197, L. 1965.

32-3117. Correction of errors—lien. (1) After the hearing, the board shall make such corrections as appear just to apportion the assessment to the benefit to be received. It shall then make and enter an order approving and certifying the assessment roll.

(2) With the aid of the assessor, the board shall levy and assess the amounts on the assessment roll against the parcels of land, or parts thereof.

(3) The assessment so made shall be a first lien on the land described in the assessment roll.

History: En. Sec. 5-417, Ch. 197, L. 1965.

32-3118. Modes of payment of assessment. The petition shall state whether the landowners want to make payment by the mode of "im-

mediate payment" or by payments in installments. Installment payments shall be made in six equal portions, in one (1), two (2), three (3), four (4), five (5), and six (6) years. Payments shall be in the form of bonds which shall draw six per cent (6%) interest per annum from the date they are issued until they are paid.

History: En. Sec. 5-418, Ch. 197, L. 1965.

32-3119. Immediate payment—notice to landowners. (1) If immediate payment is chosen, the board shall deliver the assessment roll to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in his office and immediately deliver the other to the treasurer.

(2) The treasurer shall publish a notice for two consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(a) Failure to mail notice shall not be fatal to the assessment when it has been published.

History: En. Sec. 5-419, Ch. 197, L. 1965.

32-3120. Contents of notice. The notice shall state the following: (1) The assessment roll has been certified to the treasurer for collection.

(2) Unless payment is made within thirty (30) days from the date of the notice, the payment will become delinquent and shall bear interest at the rate of ten per cent (10 %) per annum.

(3) If the assessment is not paid before it becomes delinquent, a penalty of five per cent (5 %) shall be added, as well as the interest on the annual tax roll for the current year.

(4) The interest and penalty shall be collected, together with such additional charges as are authorized to be charged and collected on other delinquent taxes.

(5) The land assessed shall be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

History: En. Sec. 5-420, Ch. 197, L. 1965.

32-3121. Installment payment procedure—county treasurer to collect.

(1) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(2) The board and the assessor shall, at the time of levying the assessment, in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate fixed by the board of county commissioners in accordance with law. The order shall specify the number of installments which shall be equal to the number of years for which the bonds may run.

(3) Each year thereafter, the treasurer shall collect one of the installments together with the interest due thereon and the interest due on the installments thereafter to become due.

(4) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments.

History: En. Sec. 5-421, Ch. 197, L. 1965; amd. Sec. 27, Ch. 234, L. 1971.

by the board of county commissioners in accordance with law" for "of six per cent (6%) per annum" at the end of the first sentence of subsection (2).

Amendments

The 1971 amendment substituted "fixed

32-3122. Board provides method of payment. When improvement is ordered upon a petition specifying the method of payment of bonds, the board shall provide that the payment of costs and expenses be made under the provisions of this part [chapter] by bonds charged against the lands in the district. The bonds may be issued to the contractors in payment or costs may be paid by the proceeds of the bonds to be issued and sold as hereinafter provided. In all other cases, the board may so provide.

History: En. Sec. 5-422, Ch. 197, L. 1965.

32-3123. Order for issuance of bonds—form and contents. (1) The board shall make and enter an order authorizing and directing the issuance of bonds payable not more than ten (10) years after the date of issuance.

(2) Each bond shall provide that the holder shall not demand payment until it comes due. It shall bear interest, payable annually, and shall have interest coupons for each interest payment attached.

(3) Each bond and coupon shall bear the date of issuance and be made payable to bearer. Each bond shall be signed by the chairman of the board and attested by the county clerk. The seal of the board shall be affixed to each bond.

(4) Bonds shall be issued in denominations of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000).

(5) Each bond shall contain a reference to the district for which it is issued and to the order and record authorizing the issue. It shall state that it is payable only out of the local improvement funds, created by special assessment, and not otherwise.

(6) On its face, each bond shall bear the designation of the district: "Local Improvement District No. _____ in _____ county, Montana."

(7) No bond shall be issued in excess of the costs and expenses of the improvements and construction.

History: En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971.

rate of six per cent (6%) per annum" after "bear interest" in the second sentence of subsection (2); and made a minor change in style.

Amendments

The 1971 amendment deleted "at the

32-3124. Notice in case of payment by special bonds—contents. (1) If the board provides that payment of costs shall be made by the issuance of bonds, the treasurer shall publish notice for two consecutive weeks and

mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice shall state that:

(a) The assessment roll has been certified to the treasurer for collection.

(b) Unless payment of the whole amount of the assessment is made within thirty (30) days from the date of the notice, special bonds shall be issued against the lands in the district for the payment of the assessment.

(c) If bonds are issued, they will be payable in annual installments with interest thereon at the rate provided in the bonds.

History: En. Sec. 5-424, Ch. 197, L. 1965.

32-3125. Payment of assessment—redemption by payment. (1) At any time within thirty (30) days after notice, the owner may pay the assessment and release and discharge his lands therefrom and from the operation and effect of the bonds.

(2) No bonds shall be issued until twenty (20) days after the expiration of thirty (30) days after notice. No bonds shall be issued for any assessment paid in full within the thirty (30) days.

(3) The owner of lands may redeem them from all liability for assessment at any time after the thirty (30) days by paying all of the assessment remaining unpaid, together with interest and all charges thereon to the date of maturity of the installment next falling due.

(4) All payments shall be made to the treasurer, who shall apply them solely to the costs of the improvement or construction.

History: En. Sec. 5-425, Ch. 197, L. 1965.

32-3126. Issuance of special bonds to contractor—sale of bonds. Bonds ordered sold by the board may be issued to the contractor constructing the improvement in payment. The board may also direct, in the order providing for issuance of the bonds, that they be sold by the treasurer at not less than par value and accrued interest. The proceeds of such bonds shall be applied in payment of the costs and expenses of the improvement.

History: En. Sec. 5-426, Ch. 197, L. 1965.

32-3127. Payment of interest—retirement. (1) The treasurer shall pay the interest on the bonds out of the funds of the district collected on assessments for the bonds.

(2) Whenever there is money in the fund against which the bonds have been issued over and above the amount sufficient for the payment of interest on all unpaid bonds, it shall be used to pay the principal on one or more of the bonds. The treasurer shall call in and pay the bonds in their numerical order.

(3) The call shall be published in the county official newspaper on the day following the maturity date of the installment of assessment, or

as soon thereafter as practicable. It shall state that special bonds No. ----- (giving the serial number or numbers of the bonds called) of the district will be paid on the day the next interest coupons become due. Interest upon the bonds thus called shall cease upon that date.

History: En. Sec. 5-427, Ch. 197, L.
1965.

32-3128. Collection of assessments by suit of owner of bonds. (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed in his own name to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest thereon, any such owner shall recover five per cent (5 %) and the costs of his suit.

(2) Any number of holders of bonds for any single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor any owner of any bond shall have any claim against the county through which the bond is issued except for the assessment. His remedy in case of nonpayment shall be confined to the enforcement of the assessments.

(4) A copy of this section shall be plainly written, printed, or engraved on each bond.

History: En. Sec. 5-428, Ch. 197, L.
1965.

32-3129. Auditing and payment of claims and accounts. (1) The committee shall approve and certify all claims and accounts for services and every kind of expense payable from funds of the district.

(2) The county auditor, or the county clerk in any county which has no auditor shall then audit all such claims and accounts. Thereafter he shall issue to the treasurer an order in favor of the person to whom the claim or account is payable to pay it.

(3) Upon presentation of the order by the person to whom it was issued, or his assignee, the treasurer shall pay it from the funds of the district.

History: En. Sec. 5-429, Ch. 197, L.
1965.

32-3130. Estimates of work completed—payment therefor. (1) The surveyor with the approval of the committee shall make estimates of the proportion of the work completed. After auditing, the estimates may be paid by the treasurer to an amount not exceeding eighty per cent (80 %) during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order only from such assessments as shall have been collected prior to the issue of the bonds and from the proceeds of the sales of the bonds after issue.

(3) If the board has ordered that the contractor shall receive bonds in payment, the order for payment shall call for bonds instead of money.

The treasurer shall deliver the bonds, dating them the day he delivers them to the contractor. Interest shall run therefrom.

(4) Amounts collected on installment payments of assessments shall be reserved and disbursed by the treasurer for the payment of principal and interest and for the redemption of such bonds.

History: En. Sec. 5-430, Ch. 197, L. 1965.

32-3131. Disposition of residue of funds. (1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury which belongs to the district shall be refunded on demand. A rebate therefrom shall be made on demand to any person who shall not have paid his assessment in full.

(2) Demand shall be made within two (2) years from the date upon which the assessment became due.

(3) Any such money remaining in the county treasury after the expiration of two years for which no demand has been made shall go into the general funds.

History: En. Sec. 5-431, Ch. 197, L. 1965.

CHAPTER 32—STATE VEHICLE FEES—PAYMENT, EXPIRATION AND DISPOSITION

Section 32-3201. Time for payment of fees.

32-3202. Expiration date.

32-3203. License is transferable.

32-3204. Disposition of fees collected by county treasurer.

32-3205. Deposit of state highway moneys.

32-3206. Additional tax by municipalities prohibited—exceptions.

32-3201. Time for payment of fees. A person who owns or operates a vehicle subject to the fees provided in chapter 197, sections 6-201, 6-202, 6-203, 6-204, 6-205, 6-206, 6-207, 6-208, and 6-210 [32-3301 to 32-3308, 32-3310] and acts amendatory thereto shall pay the fees provided in this chapter.

Prior to or at the time of registration of such vehicle as required under Title 53, Revised Codes of Montana, 1947, and acts amendatory thereto, or prior to the operation of such vehicle on the public highways, fees paid shall be the full amount provided in this chapter unless otherwise provided by law.

A person who makes application for license after the first day of July of any year shall pay one-half ($\frac{1}{2}$) of those fees.

History: En. Sec. 6-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 292, L. 1967.

Chapter 6, entitled "Fees: Time for Payment, Expiration, Disposition."

Compiler's Note

Chapters 32 to 35, inclusive, of this title were designated as Chapter 6 of the Highway Code, entitled "State Finance." This chapter was designated as Part 1 of

Amendments

The 1967 amendment rewrote this section. Prior to amendment, it read, "A person who owns a motor truck, truck-tractor, trailer, semitrailer, bus, or new

passenger motor vehicle and operates it upon the highways of the state shall, at the time he makes application for license as provided in section 53-114, pay any additional fees prescribed in this chapter.

A person who makes application for license after the first day of July of any year shall pay one-half ($\frac{1}{2}$) of those fees."

32-3202. Expiration date. The fees paid hereunder for every motor truck, truck-tractor, trailer, semitrailer, bus or automobile shall expire on December 31 of each year. Any certificate, registration, or license issued shall be valid only for the period for which issued.

History: En. Sec. 6-102, Ch. 197, L. 1965.

32-3203. License is transferable. The certificate, registration or license issued hereunder is transferable by the licensee to another truck, truck-tractor, trailer, semitrailer, low-boy trailer, pole trailer, housetrailer, or passenger car upon transfer of ownership of such truck, truck-tractor, trailer, semitrailer, low-boy trailer, pole trailer, housetrailer, or passenger car to a replacement vehicle of the same type. If a smaller vehicle is purchased, there shall be no refund.

History: En. Sec. 6-103, Ch. 197, L. 1965; amd. Sec. 4, Ch. 127, L. 1969.

Amendments

The 1969 amendment substituted "by the licensee * * * of the same type" for "only upon transfer of title or interest of

the legal owner" at the end of the first sentence and deleted second and third sentences reading: "It is not transferable to another vehicle. However, if a vehicle is destroyed from any cause, the commission may permit transfer to a replacement vehicle."

32-3204. Disposition of fees collected by county treasurer. At the time of collecting the fees provided for in section 32-3201, R.C.M. 1947, each county treasurer shall retain five per cent (5%) of the fees collected by the county treasurer for the cost of administration, and for deposit in the general fund of the county. The remaining ninety-five per cent (95%) shall be remitted monthly to the state treasurer for deposit to the credit of the commission. Such remittance shall be made on forms furnished to the county treasurer by the commission.

History: En. Sec. 6-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 293, L. 1967.

Amendments

The 1967 amendment rewrote the first sentence of this section. Prior to amendment, it read, "At the time of collecting the fees hereinafter provided for, each county treasurer shall retain five per cent (5%) of the fees so collected for the cost of administration."

Separability Clause

Section 2 of Ch. 293, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

32-3205. Deposit of state highway moneys. (1) Any reference to the state highway fund shall be taken to mean the state highway account in the earmarked revenue fund.

(2) All moneys received for the use of the commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the commission.

(3) All moneys received from the counties and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the commission.

(4) Hereafter, all moneys collected for the commission as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 6-105, Ch. 197, L. 1965.

32-3206. Additional tax by municipalities prohibited—exceptions. Municipalities shall not levy, assess, collect, or charge any additional tax upon any carrier of persons or property for hire, except as provided by law. However, no carrier shall be exempt hereby from paying a parking, curb or ad valorem property tax levied by any municipality.

History: En. Sec. 6-106, Ch. 197, L. 1965.

CHAPTER 33—ADDITIONAL TRUCK, TRAILER AND BUS FEES—SALES TAX ON VEHICLES—EXCESS WEIGHT PENALTIES

- Section 32-3301. Additional fees on motor trucks and truck-tractors.
 32-3302. Additional fees on trailers and semitrailers.
 32-3302.1. Alternative additional fees on truck-trailer combinations.
 32-3303. Additional fees—gross weight over 42,000 pounds.
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 32-3316. Violation—penalty.
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32-3301. Additional fees on motor trucks and truck-tractors. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I

Up to 6,000 lbs. -----	\$ 7.50
6,001 lbs. or more, and less than 8,000 lbs. -----	12.50
8,001 lbs. or more, and less than 10,000 lbs. -----	17.50
10,001 lbs. or more, and less than 12,000 lbs. -----	20.00
12,001 lbs. or more, and less than 14,000 lbs. -----	22.50
14,001 lbs. or more, and less than 16,000 lbs. -----	27.50
16,001 lbs. or more, and less than 18,000 lbs. -----	37.50
18,001 lbs. or more, and less than 20,000 lbs. -----	50.00
20,001 lbs. or more, and less than 22,000 lbs. -----	62.50

22,001 lbs. or more, and less than 24,000 lbs.	93.75
24,001 lbs. or more, and less than 26,000 lbs.	125.00
26,001 lbs. or more, and less than 28,000 lbs.	156.25
28,001 lbs. or more, and less than 30,000 lbs.	206.25
30,001 lbs. or more, and less than 32,000 lbs.	262.50
32,001 lbs. or more, and less than 34,000 lbs.	318.75
34,001 lbs. or more, and less than 36,000 lbs.	375.00
36,001 lbs. or more, and less than 38,000 lbs.	431.25
38,001 lbs. or more, and less than 40,000 lbs.	487.50
40,001 lbs. or more, and less than 42,000 lbs.	543.75

History: En. Sec. 6-201, Ch. 197, L. 1965; amd. Sec. 2, Ch. 2, Ex. L. 1967.

Amendments

Compiler's Note

This chapter was designated as Part 2 of Chapter 6 of the Highway Code, entitled "Additional Fees, Sales Tax, and Penalty."

The 1967 amendment increased the fees under this section where applicable from \$6 to \$7.50; 10 to 12.50; 14 to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

32-3302. Additional fees on trailers and semitrailers. In addition to other fees for the licensing of vehicles there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight thereof as set by the licensee in his application, except as otherwise provided, the following fees:

Schedule II

Trailers Other Than House Trailers.

Up to 2,500 lbs. for personal use—Exempt	
Up to 2,500 lbs. for commercial use	\$3.75
2,501 lbs. or more, and less than 6,000 lbs.	5.00
6,001 lbs. or more, and less than 8,000 lbs.	15.00
8,001 lbs. or more, and less than 10,000 lbs.	17.50
10,001 lbs. or more, and less than 12,000 lbs.	20.00
12,001 lbs. or more, and less than 14,000 lbs.	22.50
14,001 lbs. or more, and less than 16,000 lbs.	27.50
16,001 lbs. or more, and less than 18,000 lbs.	37.50
18,001 lbs. or more, and less than 20,000 lbs.	50.00
20,001 lbs. or more, and less than 22,000 lbs.	62.50
22,001 lbs. or more, and less than 24,000 lbs.	93.75
24,001 lbs. or more, and less than 26,000 lbs.	125.00
26,001 lbs. or more, and less than 28,000 lbs.	156.25
28,001 lbs. or more, and less than 30,000 lbs.	206.25
30,001 lbs. or more, and less than 32,000 lbs.	262.50
32,001 lbs. or more, and less than 34,000 lbs.	318.75
34,001 lbs. or more, and less than 36,000 lbs.	375.00
36,001 lbs. or more, and less than 38,000 lbs.	431.25
38,001 lbs. or more, and less than 40,000 lbs.	487.50
40,001 lbs. or more, and less than 42,000 lbs.	543.75

History: En. Sec. 6-202, Ch. 197, L. 1965; amd. Sec. 3, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fees under this section where applicable from 3 to 3.75; 4 to 5.00; 12 to 15.00; 14

to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

32-3302.1. Alternative additional fees on truck-trailer combinations.

In addition to other fees for the licensing of vehicles, there may be paid and collected annually instead of the fees provided in section 32-3301, R.C.M. 1947, enacted as section 6-201, Laws of 1965, for each motor truck or truck-tractor, based upon the maximum combined gross loaded weight of a truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers, as set by the licensee in his application, the following fees:

Schedule III

Truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers:

Up to 42,000 lbs.	\$ 571.00
42,001 to 44,000 lbs.	631.00
44,001 to 46,000 lbs.	691.00
46,001 to 48,000 lbs.	752.00
48,001 to 50,000 lbs.	812.00
50,001 to 52,000 lbs.	871.00
52,001 to 54,000 lbs.	931.00
54,001 to 56,000 lbs.	992.00
56,001 to 58,000 lbs.	1,052.00
58,001 to 60,000 lbs.	1,112.00
60,001 to 62,000 lbs.	1,172.00
62,001 to 64,000 lbs.	1,233.00
64,001 to 66,000 lbs.	1,293.00
66,001 to 68,000 lbs.	1,352.00
68,001 to 70,000 lbs.	1,412.00
70,001 to 72,000 lbs.	1,473.00
72,001 to 74,000 lbs.	1,533.00
74,001 to 76,000 lbs.	1,593.00
76,001 to 78,000 lbs.	1,653.00
78,001 and over	65.50 per ton or fraction thereof.

Payment of the fees provided in this section shall exempt any semitrailer or trailer in combination with a motor truck or truck-tractor so licensed from the fees provided in sections 32-3302, 32-3310, 32-3312, and 53-129.

Such trailers or semitrailers must be currently registered in another state or county.

Any trailer or semitrailer entering the state of Montana in combination with a truck or truck-tractor licensed under the above schedule may be

moved in the local delivery zone in combination with a truck, truck-tractor, licensed under section 32-3301, R. C. M. 1947, without payment of any additional fees on such truck or truck-tractor, trailer or semi-trailer.

A permit must be obtained from the state highway commission before such truck-tractor is used in local service and such permit shall be continuous and issued at no fee. Such permit shall not be issued until proof of payment of fees under Schedule III has been established.

History: En. Sec. 7, Ch. 2, Ex. L. 1967; amd. Sec. 1, Ch. 212, L. 1971.

Title of Act

An act amending section 32-1123, R. C. M. 1947, relating to maximum dimensions, weights and other characteristics and factors of vehicles, providing that limitations shall not exceed those for the federal interstate highway system until federal law permits states to exceed same; amending sections 32-3301, 32-3302, 32-3303, 32-3305 and 32-3306, R. C. M. 1947, enacted as sections 6-201, 6-202, 6-203 and 6-205, chapter 197, Laws of 1965, relating to additional fees on motor trucks, truck-tractors, trailers, semi-trailers and house trailers and increasing the fees; providing that additional fees

for each motor truck or truck-tractor, based upon maximum gross loaded weight of combinations with trailers and semi-trailers, may be paid instead of additional fees provided for in sections 32-3301 and 32-3302, R. C. M. 1947, and allowing for exemptions; and providing an effective date.

Amendments

The 1971 amendment added the reference to section 53-129 at the end of the first paragraph after the schedule; and added the final three paragraphs.

Effective Date

Section 8 of Ch. 2, Ex. Laws 1967 read "This act is effective January 1, 1968."

32-3303. Additional fees—gross weight over 42,000 pounds. In addition to the fees provided for in sections 32-3301 and 32-3302, for each motor truck, truck-tractor, trailer, or semitrailer having a gross loaded weight in excess of forty-two thousand (42,000) pounds and within the weight limits specified in section 32-1123, there shall be paid and collected annually a fee of sixty-two dollars and fifty cents (\$62.50) for each two thousand (2,000) pounds, or fraction thereof.

History: En. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment substituted "32-

3301 and 32-3302" for "6-201 and 6-202"; and increased the annual fee paid under this section from \$50 to \$62.50.

32-3304. Additional fees—pole trailers, low-boys, and livestock. There shall be paid and collected annually a fee equal to seventy-five per cent (75%) of the fees provided in Schedule I and Schedule II above on pole trailers; trucks, truck-tractors, trailers and semitrailers used exclusively in hauling livestock and logs; truck-tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers.

History: En. Sec. 6-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 187, L. 1969.

Amendments

The 1969 amendment deleted reference to equipment used in hauling ready-mix concrete.

32-3304.1. Additional fees—haulers of ready-mix concrete. There shall be paid and collected annually a fee equal to fifty-five per cent (55%) of the fees provided in Schedule I and Schedule II, as provided

in section 32-3301 and 32-3302, R. C. M. 1947, on concrete mixer trucks, concrete mixer trailers and concrete mixer semitrailers used exclusively for hauling ready-mix or ready-to-pour concrete and truck-tractors used exclusively in hauling concrete mixer semitrailers.

History: En. 32-3304.1 by Sec. 2, Ch. 187, L. 1969; amd. Sec. 1, Ch. 102, L. 1971.

Schedules I and II contained in sections 32-3301 and 32-3302.

Title of Act

An act to amend section 32-3304, R. C. M. 1947, as amended by chapter 197, Laws of 1965, by striking therefrom reference to equipment used in hauling ready-mix concrete; and providing for a new section to be numbered 32-3304.1, providing for the annual payment and collection on trucks, truck-tractors, trailers and semitrailers used exclusively in hauling ready-mix concrete of a fee equal to fifty-five per cent (55%) of the fees provided in

Amendments

The 1971 amendment made a minor change in style and substituted "concrete mixer trucks, concrete mixer trailers and concrete mixer semitrailers used exclusively for hauling ready-mix or ready-to-pour concrete and truck tractors used exclusively in hauling concrete mixer semitrailers" at the end of the section for "trucks, truck-tractors, trailers and semitrailers used exclusively in hauling ready-mix concrete."

32-3305. Additional fees—house trailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided, a fee equal to seventy-five cents (\$.75) for each foot of over-all trailer body length exclusive of bumpers and hitch.

History: En. Sec. 6-205, Ch. 197, L. 1965; amd. Sec. 5, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fee under this section from 50¢ to 75¢.

32-3306. Additional fees—certain farm vehicles. Except for motor trucks owned and operated by co-operative associations or co-operative marketing associations, there shall be paid and collected annually a fee equal to sixteen per cent (16%) of the fees provided in Schedule I and Schedule II above on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy, and on one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture. However, the minimum fee so paid shall be six dollars (\$6). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

History: En. Sec. 6-206, Ch. 197, L. 1965; amd. Sec. 1, Ch. 143, L. 1967; amd. Sec. 6, Ch. 2, Ex. L. 1967.

phil has made a composite section embodying the amendment made by both 1967 acts.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 143 and once by Ch. 2 (Ex. Sess.). Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the com-

Amendments

Chapter 143, Laws of 1967, inserted "and on one truck tractor * * * in direct benefit to agriculture" after "orchard or dairy"; and increased the minimum fee to be paid by farm vehicles from \$4 to \$6. Chapter 2 (Ex. Sess.), Laws of 1967,

decreased the percentage of the fee equal to fees provided in Schedule I under this section from 20 to 16 per cent; and increased the minimum fee from \$4 to \$6.

32-3307. Additional fees—buses. There shall be paid and collected annually for each bus or auto stage with the exception of school buses a fee of seven dollars (\$7) per seat, exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof, except that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule established in section 6-201 [32-3301]. School buses shall not be exempt if they enter charter service.

History: En. Sec. 6-207, Ch. 197, L. 1965.

32-3308. Additional fees—quarterly payment. When the gross weight of any vehicle exceeds twenty-four thousand (24,000) pounds, the additional fees for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three months' period for one-fourth ($\frac{1}{4}$) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar (\$1) shall be charged. The commission is authorized to establish rules and regulations relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

History: En. Sec. 6-208, Ch. 197, L. 1965.

32-3309. Failure to pay additional fees—penalty. No vehicle licensed under the provisions of section 6-208 [32-3308] shall be operated over the public highways unless the owner or operator thereof within ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, after the expiration of any such three-month period shall apply for and pay the required fee for a license for an additional three-month period, or for the remainder of the year. Any person who operates any such vehicle upon the public highways after the expiration of said ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, shall be guilty of a misdemeanor. In addition he shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation thereof, less the fees for any period or periods of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required aforesaid, the Montana highway patrol, county sheriff or city police may impound such vehicle in such manner as may be directed for such cases by the supervisor of the Montana highway patrol until such requirement is met.

History: En. Sec. 6-209, Ch. 197, L. 1965, amd. Sec. 2, Ch. 292, L. 1967.

Amendments

The 1967 amendment substituted "ten (10) calendar days or seven (7) business

days as provided by law, whichever is greater" for "ten (10) days" wherever found in this section; and substituted "may" for "shall" after "city police" in the last sentence.

32-3310. Three unit combination—fees in lieu of gross weight fees otherwise provided—marking. (1) In lieu of the gross weight fees pro-

vided in sections 6-201 to 6-208 [32-3301 to 32-3308] of this chapter, the owner of any motor truck or truck-tractor used on the highways of the state in connection with two (2) trailers or semitrailers at the same time shall register them as a three unit combination in the following manner:

(a) By paying the registration and other fees covering the maximum practical gross vehicle weight for such truck or truck-tractor, but not less than the actual operating gross weight under the provisions of sections 53-114, 53-122, and sections 6-201 and 6-203 [32-3301 and 32-3303] of this chapter.

(b) By registering such trailers in accordance with the provisions of sections 53-114 and 53-112, and by paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with the provisions of sections 6-202 and 6-203 [32-3302 and 32-3303] of this chapter on the combined gross weight of the two (2) trailers or semitrailers, treating them as if they were a single unit.

(2) Vehicles on which fees are paid in accordance with this section shall have marked thereon the gross weight for which fees have been paid, and shall bear a distinctive mark designated by the commission.

(3) Nothing herein shall be construed as authorizing axle loads in excess to those established by section 32-1123.

History: En. Sec. 6-210, Ch. 197, L. 1965.

section 53-112 is apparently in error, and the intention may have been to refer to section 53-122.

Compiler's Note

The reference in paragraph (1) (b) to

32-3311. Repealed.

Repeal

Section 32-3311 (Sec. 6-211, Ch. 197, L. 1965), relating to markings of weight or

capacity on trucks, truck-tractors and buses, was repealed by Sec. 2, Ch. 37, Laws 1971.

32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states. (1) In lieu of other fees for the licensing of vehicles, there shall be collected a fee for each motor truck, truck-tractor, trailer, and semitrailer already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee shall be collected upon each entrance of such vehicle into the state, and shall be based upon the number of miles to be traveled in the state as shown in the application of the nonresident operator.

(2) The fee shall be collected for any single vehicle. When any combination of truck, truck-tractor, semitrailer, or trailer totals more than six thousand (6,000) pounds gross weight, the fee shall be collected for each unit in the combination.

(3) The fee shall be:

(a) Five dollars (\$5) for each trip of two hundred (200) miles or less.

(b) Seven dollars and fifty cents (\$7.50) for each trip of over two hundred (200) miles to four hundred (400) miles.

(c) Ten dollars (\$10) for each trip of over four hundred (400) miles.

(4) Such fees shall not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a

carnival which is under contract with a state, county, or district fair association.

History: En. Sec. 6-212, Ch. 197, L. 1965.

32-3313. Temporary trip permits showing payment of fees—display.

(1) Temporary trip permits showing payment of the fees provided for in the last section shall be issued under such rules and regulations as may be prescribed by the commission. Such permit shall be displayed in the vehicle for which the fee has been paid at all times while such vehicle is being operated on the highways of this state by posting it where it may be read.

(2) The commission may limit the operation of any such vehicle in this state to a definite period of time.

History: En. Sec. 6-213, Ch. 197, L. 1965.

32-3314. Time for payment of fees by nonresidents. A nonresident owner or operator of a motor truck, truck-tractor, trailer or semitrailer shall, immediately upon arrival in the state, contact the nearest highway patrol office, any commission office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer.

History: En. Sec. 6-214, Ch. 197, L. 1965.

32-3315. Sales tax on new motor vehicles. (1) In consideration of the right to use the highways of the state, there shall be imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The word motor vehicle as used in this section shall mean automobiles, auto trucks and motorcycles, propelled by their own power, used upon the public highways of the state. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) One and one-half per cent ($1\frac{1}{2}\%$) of the F.O.B. factory list price or F.O.B. port of entry list price, during the first quarter of the year.

(b) One and one-eighth per cent ($1\frac{1}{8}\%$) of the list price during the second quarter of the year.

(c) Three-fourths ($\frac{3}{4}$) of one per cent (1%) during the third quarter of the year.

(d) Three-eighths ($\frac{3}{8}$) of one per cent (1%) during the fourth quarter of the year.

(3) In case the manufacturer or importer fails to furnish the F.O.B. factory list price or F.O.B. port of entry list price, the highway commission may use any published price lists.

(4) The proceeds from this tax should be remitted to the state treasurer every thirty (30) days for credit to the earmarked revenue fund of the state highway account.

(5) The new vehicle shall not be subject to any other assessment or taxation during the calendar year in which the original application for title is made.

History: En. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967.

Amendments

The 1967 amendment, in subsection (1), deleted "passenger" before "motor vehicles" and added the present second sentence; substituted "earmarked revenue fund of the state highway account" for "commission" at the end of subsection (4); deleted "whether or not it is in the state on the first day of January of that year" at the end of subsection (5); and deleted subsection (6), which read, "The tax herein imposed shall not apply to any motor vehicle assessed pursuant to the provisions of section 84-406."

Repealing Clause

Section 6 of Ch. 290, Laws 1967 read "That section 84-6009, Revised Codes of Montana, 1947, is repealed."

Effective Date

Section 7 of Ch. 290, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

References

Swartz v. Berg, 147 M 178, 411 P 2d 736.

32-3316. Violation—penalty. Any owner or operator of a motor truck, truck-tractor, trailer, semitrailer, bus or automobile who violates any provision of this part [chapter] is guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars (\$300), or by a sentence of not more than sixty (60) days in the county jail, or both.

History: En. Sec. 6-216, Ch. 197, L. 1965.

32-3317. Excess weight—penalties. (1) The operator shall be subject to the penalties stated in this section whenever the gross laden weight of any motor truck, truck-tractor, trailer, or semitrailer operated upon any highway in this state exceeds:

(a) The gross vehicle weight shown on the owner's certificate of registration and tax receipt issued pursuant to section 53-107, or

(b) The gross vehicle weight shown on the gross vehicle weight receipt issued pursuant to section 53-620.

(2) The operator shall:

Immediately thereafter pay to the nearest county treasurer or state highway commission the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight.

History: En. Sec. 6-217, Ch. 197, L. 1965; amd. Sec. 1, Ch. 37, L. 1971.

Amendments

The 1971 amendment deleted former paragraph (a) of subsection (1); redesignated former paragraphs (b) and (c) of subsection (1) as (a) and (b) respectively; deleted former paragraphs (a) and (c) of subsection (2); inserted "or state high-

way commission" after "nearest county treasurer" in former paragraph (b), now the sole paragraph of subsection (2); and deleted former subsection (3).

Repealing Clause

Section 2 of Ch. 37, Laws 1971 read "Section 32-3311, R. C. M., 1947, is repealed."

CHAPTER 34—FEES FOR DRIVE-AWAY OR TOW-AWAY
TRANSPORTERS

- Section 32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods.
- 32-3402. One-trip fee in addition to permit and plate fees, payable quarterly.
- 32-3403. Disposition of funds collected.
- 32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1.
- 32-3405. Fees provided are in lieu of other fees payable—election to pay other fees.
- 32-3406. Exemptions from fees.

32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods. (1) Every person, firm, partnership or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, foreign countries or provinces, by the drive-away or tow-away methods where such vehicles being driven, towed or transported by the saddle-mount, tow-bar or full-mount methods, or any lawful combination thereof, will be transported over the highways of the state of Montana but once, may annually apply to the registrar of motor vehicles for a permit to use the highways of this state, and shall pay, upon filing such application, a fee of one hundred dollars (\$100). Upon processing of the application, the registrar of motor vehicles shall issue an annual permit to the applicant.

(2) The permit holder may also apply to the registrar of motor vehicles for a sufficient number of distinctive transit plates or devices showing the permit number for identification of the vehicles being transported by the permit holder, and such plates or devices may be used on any vehicle being driven, towed or transported by and under the control of the permit holder. The registrar of motor vehicles shall collect the additional sum of one dollar (\$1) for each pair of transit plates or devices applied for and issued.

(3) The registrar of motor vehicles shall retain the permit and plate fees to defray costs of administering this act.

(4) The permit and transit plates or devices expire on December 31 of each year.

History: En. Sec. 6-401, Ch. 197, L. 1965. of Chapter 6 of the Highway Code, entitled "Fees for Drive-Away or Tow-Away Transporters." There was no Part 3 of Chapter 6.

Compiler's Note

This chapter was designated as Part 4

32-3402. One-trip fee in addition to permit and plate fees, payable quarterly. In addition to the permit and plate fees, a permit holder shall pay to the registrar of motor vehicles a one-trip fee of five dollars (\$5) per driven vehicle. The fee shall be paid within fifteen (15) days after the end of the calendar quarter upon forms recommended or supplied by the registrar of motor vehicles.

History: En. Sec. 6-402, Ch. 197, L. 1965.

32-3403. Disposition of funds collected. The registrar of motor vehicles shall retain five per cent (5 %) of the funds collected in payment of the trip fees to defray costs of administration. The remaining ninety-five per cent (95 %) shall be remitted, on or before the fifteenth day of each month after collection, to the state treasurer for deposit to the credit of the commission.

History: En. Sec. 6-403, Ch. 197, L. 1965.

32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1. The fees provided for drive-away or tow-away transportation are in addition to any fees payable by for-hire carriers under the provisions of Chapter 1, Title 8, Revised Codes of Montana, 1947, as amended.

History: En. Sec. 6-404, Ch. 197, L. 1965.

32-3405. Fees provided are in lieu of other fees payable—election to pay other fees. The fees provided for drive-away or tow-away transporters are declared to be in consideration of the right to use the highways of the state, and are in lieu of all other fees including those which might be payable, under the provisions of part 2 of this chapter [chapter 33 of this title]. However, any operator may elect to pay the fees payable under the provisions of that part [chapter].

History: En. Sec. 6-405, Ch. 197, L. 1965.

32-3406. Exemptions from fees. The fees provided for drive-away or tow-away transporters shall not apply to:

- (1) Vehicles regularly used in the hauling of vehicles by the truck-away method, or to the vehicles so transported.
- (2) Vehicles operated under dealers' licenses or plates.
- (3) Vehicles registerable under any other provisions of law.
- (4) Any person not issued a drive-away or tow-away permit.

History: En. Sec. 6-406, Ch. 197, L. 1965.

CHAPTER 35—BOND ISSUES FOR STATE TOLL BRIDGES

Section	32-3501.	Toll bridge bond issues—authorization—nature.
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32-3501. Toll bridge bond issues—authorization—nature. (1) The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of revenue bonds for the purpose

of paying the cost of any toll bridge. Each resolution providing for the issuance of bonds shall set forth and identify the toll bridge for which the bonds are to be issued. The bonds authorized by each resolution shall constitute a separate series identifiable by a series letter or letters.

(2) Each bond issued by the authority shall contain a statement on the face thereof that the state shall not be obligated to pay the same or the interest thereon except from the special fund provided for that purpose. Toll bridge bonds shall be secured only by the revenues from the toll bridge or toll bridges constructed with the proceeds of such bonds.

(3) All such bonds shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities [Chapter 8, Title 87A].

(4) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes with the same effect as though they had remained in office until such delivery.

History: En. Sec. 6-501, Ch. 197, L. 1965. **Compiler's Note**

This chapter was designated as Part 5 of Chapter 6 of the Highway Code, entitled "Bond Issues for Toll Bridges."

32-3502. Toll bridge bonds—maturity—interest. (1) Toll bridge bonds shall mature at such time or times, not more than twenty (20) years from their date or dates, as may be fixed by the authority's resolution. However, they may be made redeemable before maturity at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds.

(2) The authority shall determine:

(a) The rate of interest such bonds shall bear.

(b) The time or times of payment of such interest.

(c) The form of the bonds and the interest coupons to be attached thereto.

(d) The manner of executing the bonds and coupons.

(e) The denomination or denominations of the bonds; and

(f) The place or places of payment of principal and interest, which may be at any bank or trust company.

(3) Prior to the preparation of definitive bonds, the authority may issue temporary bonds with or without coupons under the same restrictions as definitive bonds. Such bonds shall be exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

History: En. Sec. 6-502, Ch. 197, L. 1965; amd. Sec. 29, Ch. 234, L. 1971. **Amendments**

The 1971 amendment deleted "not exceeding six per cent (6%) per annum" at the end of subdivision (2) (a).

32-3503. Toll bridge bonds—sale—registration. (1) The bonds authorized may be issued and sold from time to time, in such amounts as shall be determined by the authority. The authority may sell said bonds in such manner and for such price as it may determine to be in the best interests of the state. However, no such sale shall be made for less

than a price which, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, will show a net return of over six per cent (6 %) per annum to the purchaser upon the amount paid therefor.

(2) The authority may make provision for the registration of toll bridge bonds in the name of the owner as to principal alone or as to both principal and interest.

History: En. Sec. 6-503, Ch. 197, L.
1965.

32-3504. Toll bridge bonds—proceeds—insufficiency—surplus. (1) The proceeds of toll bridge bonds shall be used solely for the payment of the cost of the toll bridge constructed according to law for the payment of which such bonds were issued, and shall be disbursed in such manner and under such restrictions as the authority may provide.

(2) If such proceeds shall be less than the cost of any toll bridge, additional bonds may be issued in like manner to provide the amount of such deficit. Unless otherwise provided in the resolution authorizing the bonds, they shall be deemed to be of the same issue, entitled to payment from the same fund, and of equal preference as the bonds first issued for the same toll bridge.

(3) If such proceeds exceed the cost of any toll bridge, the surplus shall be paid into the fund provided for the payment of principal and interest of such bonds.

History: En. Sec. 6-504, Ch. 197, L.
1965.

32-3505. Lien on moneys received from bonds. There is hereby created and granted a lien in favor of the holders of any bonds issued by the authority for payment of the cost of a particular toll bridge upon all moneys received from any such bonds until such moneys are applied in payment of such bonds.

History: En. Sec. 6-505, Ch. 197, L.
1965.

32-3506. Separate funds—depositories. (1) The authority shall create three (3) separate funds for the bonds of each series issued:

(a) The toll bridge construction fund.

(b) The toll bridge revenue fund.

(c) The toll bridge sinking fund. Each fund shall be identified by the same series letter or letters as the bonds of such series.

(2) The money in the funds shall be deposited in any depository or depositories and secured in such manner as the authority may determine. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish indemnifying bonds or to pledge such securities as may be required by the authority.

History: En. Sec. 6-506, Ch. 197, L.
1965.

32-3507. Construction fund—disposition of surplus. (1) The proceeds of the bonds of each series issued by the authority shall be placed to the credit of the appropriate construction fund which shall at all times be kept segregated from all other funds.

(2) There shall also be credited to the appropriate construction fund:

(a) All interest accrued upon the bonds.

(b) All interest received upon the deposits of moneys in the fund.

(c) All money received by grant or donation from the United States or any other source for the construction of such toll bridge.

(3) The moneys in each construction fund shall be disbursed to pay the cost of the toll bridge for which such fund was created. Any surplus which may remain in any construction fund after providing for the payment and the cost of such toll bridge shall be added to the appropriate sinking fund.

History: En. Sec. 6-507, Ch. 197, L. 1965.

32-3508. Revenue fund. All tolls collected by the engineer under the supervision of the authority and subject to its rules and regulations shall be deposited to the credit of the respective toll bridge revenue fund designated by the authority.

History: En. Sec. 6-508, Ch. 197, L. 1965.

32-3509. Sinking fund. (1) In the resolution authorizing the issuance of each series of bonds, the authority shall provide for paying into the appropriate sinking fund at stated intervals all moneys then remaining in the revenue fund after paying all costs of operation, maintenance and repair of the toll bridge with respect to which such revenue fund was created.

(2) All moneys in each sinking fund shall be pledged for the payment of and used only for the purpose of paying:

(a) The interest upon the bonds as it becomes due.

(b) The necessary fiscal agency charges for paying bonds and interest.

(c) The principal of the bonds as they fall due.

(d) Any premiums upon bonds retired by call or purchase.

(3) Prior to the issuance of any bonds in a series the authority may provide by resolution for using the sinking fund or any part of such fund to purchase outstanding bonds payable from such fund. The price to be paid cannot exceed the price, if any, at which such bonds will be payable or redeemable at the next interest date. All bonds redeemed or purchased shall be canceled and no bonds issued in place thereof.

(4) The resolution authorizing any bonds may provide for a reserve for the payment of principal and interest. The moneys in each sinking fund, less such reserve, if not used within a reasonable time for the purchase of bonds for cancellation, shall be used to redeem bonds then subject to redemption at the redemption price then applicable.

History: En. Sec. 6-509, Ch. 197, L. 1965.

CHAPTER 36—COUNTY TAX LEVIES FOR ROAD AND BRIDGE CONSTRUCTION

- Section 32-3601. General road tax.
 32-3602. Special bridge taxes—levy and collection.
 32-3603. Suburban railway to pay county for use of bridge.
 32-3604. Special tax for construction and maintenance.
 32-3605. Additional tax levy for road and bridge construction.

32-3601. General road tax. (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than twelve (12) mills, except in fourth, fifth, sixth and seventh class counties which may levy not more than fifteen (15) mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders as the board may direct.

(2) This section shall not apply to incorporated cities and towns which, by ordinance, provide for the levy of a like tax for road, street, or alley purposes.

(3) All moneys collected under this section shall belong to the county road fund.

History: En. Sec. 7-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 83, L. 1967; amd. Sec. 1, Ch. 199, L. 1971.

Compiler's Note

Chapters 36 to 38, inclusive, of this title were designated as Chapter 7 of the Highway Code, entitled "County Finance." This chapter was designated as Part 1 of Chapter 7, entitled "Tax Levies for Road and Bridge Construction."

Amendments

The 1967 amendment increased the tax limit in subsection (1) from 10 to 12 mills.

The 1971 amendment inserted "except in fourth, fifth, sixth and seventh class counties which may levy not more than fifteen (15) mills" in the first sentence of subsection (1).

32-3602. Special bridge taxes—levy and collection. (1) Each board may levy a special tax not to exceed three (3) mills on all taxable property in the county for the purpose of constructing, maintaining and repairing free public bridges.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the total linear feet of bridges or bridge construction is more than four thousand (4,000) feet and the taxable value of property in that county is four million dollars (\$4,000,000) or less, the board may, if necessary, levy one (1) mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than six thousand (6,000) feet and the taxable value of property in that county is not less than four million dollars (\$4,000,000) nor more than twelve million dollars (\$12,000,000), the board may, if necessary, levy two (2) mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to

the order of the board for use as herein provided, and shall not be transferable to any other fund.

History: En. Sec. 7-102, Ch. 197, L.
1965.

32-3603. Suburban railway to pay county for use of bridge. (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth ($\frac{1}{4}$) nor more than one-half ($\frac{1}{2}$) of the cost of construction of the bridge.

(2) The railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth [$\frac{1}{4}$] nor more than one-half [$\frac{1}{2}$]) as is determined by the board during the time the bridge is used by the railway.

History: En. Sec. 7-103, Ch. 197, L.
1965.

32-3604. Special tax for construction and maintenance. Each board may levy a special tax not to exceed five (5) mills on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.

History: En. Sec. 7-104, Ch. 197, L.
1965.

32-3605. Additional tax levy for road and bridge construction. (1) Each board may make an additional levy upon the taxable property in the county of ten (10) mills or less for constructing public highways and bridges.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form, inserting the number of mills to be levied and the name of the county: "Shall there be an additional levy of _____ mills upon the taxable property in the county of _____, state of Montana, for the purpose of constructing public highways and bridges?"

☐ Yes

☐ No."

(3) A majority of the votes cast shall be necessary to permit the additional levy which shall be collected in the same manner as other road taxes.

History: En. Sec. 7-105, Ch. 197, L.
1965.

CHAPTER 37—LOCAL USE OF REGISTRATION AND OTHER VEHICLE FEES

- Section 32-3701. County motor vehicle fund.
32-3702. Population centers—city road fund—county road fund.
32-3703. Population centers—use of city road fund.
32-3704. Other counties—county road fund—city road fund.

- 32-3705. Counties other than population centers—use of city road fund.
 32-3706. Use of county road fund.
 32-3707. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment.

32-3701. County motor vehicle fund. All license and registration fees collected by the treasurer of the county in which any motor vehicle is registered shall be credited to the county motor vehicle fund.

History: En. Sec. 7-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 7 of the Highway Code, entitled "Registration and Other Fees."

32-3702. Population centers—city road fund—county road fund. (1) The county treasurer shall segregate from the county motor vehicle fund, and designate as the "city road fund":

(a) Fifty per cent (50 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city.

(i) Having a population of thirty-five thousand (35,000) or more according to the federal census of 1930, or

(ii) Lying within one (1) mile of the limits of an incorporated city having a population of thirty-five thousand (35,000) or more according to the federal census of 1930.

(b) Twenty-five per cent (25 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city having a population of ten thousand (10,000) or more according to the federal census of 1950, which city is located in a county which has an area of less than seven hundred and fifty (750) square miles.

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the "county road fund."

History: En. Sec. 7-202, Ch. 197, L. 1965; amd. Sec. 1, Ch. 89, L. 1967.

Compiler's Note

The compiler has inserted the bracketed designation for subsection (1).

Amendments

The 1967 amendment substituted "1930" for "1960" in subdivision (a)(i) and (a)(ii), and substituted "1950" for "1960" in subdivision (b).

Repealing Clause

Section 2 of Ch. 89, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 89, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

32-3703. Population centers—use of city road fund. (1) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The city treasurer shall hold the fees so paid in a separate "city road fund," which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

(3) All such work shall be under the supervision of the county road superintendent, who shall co-operate with the city council in designating the highway or street upon which work is to be done and in selecting the type of pavement to be used.

(4) The cost of supervision by the county surveyor shall not exceed five per cent (5 %) of the cost of the work.

History: En. Sec. 7-203, Ch. 197, L. 1965.

32-3704. Other counties—county road fund—city road fund. (1) In every county which does not have a city and area populated as provided in section 7-202 of this part [32-3702 of this chapter], the county treasurer shall divide the county motor vehicle fund between a "city road fund" and a "county road fund."

(2) The division shall be in the ratio determined by the board of county commissioners. The board shall determine the ratio by comparing the total number of miles of public streets and highways, which are not either state or federal highways, situated within the limits of incorporated cities and towns with the total number of miles of public streets and highways, which are not either state or federal highways, outside of such corporate limits; providing that state or federal roads may be counted if they are by written agreement maintained by the city or county.

History: En. Sec. 7-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 16, L. 1967. are not either state or federal highways" after "streets and highways" each time those words appear and added the proviso at the end of subsection (2).

Amendments

The 1967 amendment inserted "which

32-3705. Counties other than population centers—use of city road fund. (1) At the end of each month, the county treasurer shall pay to the treasurer of each incorporated city or town such proportion of the city road fund as directed by the board of county commissioners.

(2) The city or town treasurer shall hold the fund so paid in a separate "city road fund," which shall be used by the city or town council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

History: En. Sec. 7-205, Ch. 197, L. 1965.

32-3706. Use of county road fund. The county road fund of each county shall be used for the construction, repair, and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

History: En. Sec. 7-206, Ch. 197, L. 1965.

32-3707. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in section 53-642 and occasionally moves that equipment on, over,

or across the highways of the state, shall not be subject to registration of that equipment or be required to pay the fees and charges provided for in the chapter "State Finance" [chapter 32 to 35 of this title]. Prior to any movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealers' license plate attached thereto.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the registrar of motor vehicles, together with the payment of a fee of five dollars (\$5); provided, that such equipment for which a special mobile equipment plate is sought, shall be subject to the assessment of personal property taxes either on the date application is made for such plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March, provided further, that it is a condition precedent to the issuance of a special mobile equipment plate that the personal property taxes so assessed against the special mobile equipment, be paid. The fees collected under this act shall belong to the county road fund.

(3) The identification plate shall expire on March 31 of each year.

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from the provisions of this section.

History: En. Sec. 7-207, Ch. 197, L. 1965; amd. Sec. 1, Ch. 232, L. 1967; amd. Sec. 1, Ch. 244, L. 1971. (2), inserted the provisos after "five dollars (\$5)"; and, in subdivision (3), substituted "March 31" for "December 31."

The 1971 amendment inserted "or a dealers' license plate" before "attached thereto" at the end of subsection (1).

Amendments

The 1967 amendment, in subdivision

CHAPTER 38—COUNTY ROAD AND BRIDGE BONDS

- Section 32-3801. County commissioners may issue bonds.
 32-3802. Negotiations for refunding.
 32-3803. Single purpose highway—bridge.
 32-3804. Limitation on amount of bonds—issuance in excess of limitations void.
 32-3805. Term—power to redeem—maximum interest.
 32-3806. Form of bonds.

32-3801. County commissioners may issue bonds. (1) Each board may issue, negotiate and sell coupon bonds on the credit of the county:

(a) To construct or improve, or acquire rights of way for public highways; or bridges.

(b) To refund, pay and redeem optional, redeemable or maturing highway or bridge bonds when there are not sufficient funds available and it is deemed in the best interests of the county to refund the bonds.

(2) The value of the bonds issued and all other outstanding indebtedness of the county shall not exceed five per cent (5%) of the value of the taxable property within the county as ascertained by the last preceding general assessment.

(3) The bonds shall be issued as provided in section 16-2008.

History: En. Sec. 7-301, Ch. 197, L.
1965.

Compiler's Note

This chapter was designated as Part 3
of Chapter 7 of the Highway Code, en-
titled "Bonds."

32-3802. Negotiations for refunding. (1) Whenever the total indebtedness of a county exceeds the constitutional limitation of five per cent (5 %) of the value of the taxable property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) Negotiate with the bondholders for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof.

(b) Enter into such agreement or agreements.

(c) Issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series and each series may be either amortization or serial bonds.

(2) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds.

History: En. Sec. 7-302, Ch. 197, L.
1965.

32-3803. Single purpose highway—bridge. (1) It shall be deemed a single purpose to:

(a) Acquire a right of way for and construct a public highway including any bridge or bridges thereon.

(b) Contribute to the cost of a federal-aid bridge.

(c) Contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes.

(3) Nothing contained in this section shall be construed as amending or repealing sections 16-1163—16-1165.

History: En. Sec. 7-303, Ch. 197, L.
1965.

32-3804. Limitation on amount of bonds—issuance in excess of limitations void. (1) Except as otherwise provided hereafter and in section 16-2010, no county shall issue bonds which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per cent ($2\frac{1}{2}$ %) of the value of the taxable property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per cent ($2\frac{1}{2}$ %), but will not exceed five per cent (5 %) of the value of such taxable property, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) All bonds issued by any county in excess of the limitations herein fixed shall be null and void, except that the limitations shall not apply

to refunding bonds issued to pay or retire county bonds lawfully issued prior to January 1, 1932.

(4) The words "value of the taxable property" are used in this section in the same sense as in section 5 of article 13 of the constitution and shall be given the same meaning and construction.

History: En. Sec. 7-304, Ch. 197, L. 1965.

32-3805. Term—power to redeem—maximum interest. (1) No bonds issued under subsection (1) of section 7-301 of this part (32-3801) shall be for a longer term than twenty (20) years.

(2) No bond issued under subsection (2) of that section shall be issued for a term longer than ten (10) years, except that:

(a) If the unexpired term of the bonds to be refunded is greater than ten (10) years, the refunding bonds may be issued for the unexpired term; or

(b) If the ten (10) year term requires an annual tax levy for payment of the refunding bonds which exceeds ten (10) mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to ten (10) mills. In no event shall the term exceed twenty (20) years.

(3) All bonds issued for a term longer than five (5) years shall be redeemable at the option of the county five (5) years after the date of issue and on any payment due date thereafter before maturity. This statement shall appear on the face of each bond.

(4) Interest shall be payable semiannually.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted from the beginning of subsection (4) "The maximum rate of interest which any bonds shall bear is six per cent (6%) per annum"; and made a minor change in style.

Compiler's Note

The reference in subsection (2) of this section to subsection (2) of section 32-3801 may be in error. It may have been intended to refer to paragraph (1) (b) of section 32-3801.

32-3806. Form of bonds. (1) All bonds issued by any county shall be either amortization bonds or serial bonds. Amortization bonds shall be issued in preference to serial bonds.

(2) The term "amortization bonds" means that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable. The part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date. However, the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

(3) The term "serial bonds" means a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds becoming due and payable each year. The amount to be paid and

redeemed each year shall be determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year will be the same. The amount of installments becoming due and payable the first year, or the first and second years, may vary from the others to the extent which results from fixing the amounts of each bond of the other installments at one hundred dollars (\$100), five hundred dollars (\$500) or one thousand dollars (\$1,000) as may be determined by the board.

History: En. Sec. 7-306, Ch. 197, L. 1965.

CHAPTER 39—ACQUISITION AND DISPOSITION OF PROPERTY BY STATE

- Section 32-3901. Rights acquired by public in highway.
 32-3902. General power of commission to acquire interests in property.
 32-3903. Purposes for which property acquired.
 32-3904. Exercise of right of eminent domain—presumption.
 32-3905. Acquisition of whole parcel—sale of excess.
 32-3906. Power to acquire for future.
 32-3907. Road building materials.
 32-3908. No compensation in certain cases—exceptions.
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 32-3912. Option of original owner or successor in interest to purchase at sale price.
 32-3913. Private sale if no bid or offer.
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 32-3915. Conveyances—execution—contents.
 32-3916. Rendering irrigable lands unusable—unpaid construction costs.
 32-3917. Abandonment or vacation of federal-aid or state highways.
 32-3918. Highway crossing railroad, canal, or ditch.
 32-3919. Rights of way for toll bridges.
 32-3920. Acquisition of property for controlled access facility.
 32-3921. Payment of moving expenses authorized.
 32-3922. Highway commission to adopt rules and regulations.
 32-3923. Definitions.
 32-3924. Advisory assistance.
 32-3925. Compensation for moving expense as part of cost of construction—fixed payments in lieu of actual expense—dwelling—business or farm operation.
 32-3926. Additional payment for realty with qualified dwelling—period of occupancy—amount—owner must subsequently purchase dwelling.
 32-3927. Additional payment for realty with other dwelling—period of occupancy—amount.
 32-3928. Review of application for assistance—highway commission's decision final.
 32-3929. Rules and regulations.
 32-3930. Assistance payments not income for state tax purposes.
 32-3931. No new element of condemnation damages created.

32-3901. Rights acquired by public in highway. By taking or accepting land for a highway, the public may acquire either a fee simple or any lesser estate or interest.

History: En. Sec. 8-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 39 and 40 of this title were designated as Chapter 8 of the Highway

Code, entitled "Acquisition and Disposition of Property and Interests Therein." This chapter was designated as Part 1 of Chapter 8, entitled "Acquisition and Disposition by State."

32-3902. General power of commission to acquire interests in property. Notwithstanding any other provision of law, the commission may acquire by purchase or any other lawful manner any lands or other real property, excluding oil, gas and mineral rights, which it deems reasonably necessary for present or future highway purposes. The commission may acquire a fee simple or any lesser estate or interest.

History: En. Sec. 8-102, Ch. 197, L. 1965.

32-3903. Purposes for which property acquired. The acquisition of lands or other property, or any interest therein, for present or future highway purposes includes, but is not limited to any of the following purposes: (1) For rights of way, including those necessary for highways within cities.

(2) For exchanging lands or other property or any interest therein for other such lands or interests for rights of way or other authorized purposes. The right of eminent domain shall not be exercised for this purpose.

(3) For deposits of road building materials, including rock, gravel, sand, and earth for reasonably foreseeable future road building purposes and uses. The right of eminent domain shall not be exercised to acquire any such deposits which constitute a component part of an existing private business enterprise.

(4) For offices, weighing stations, shops, storage yards, buildings, rest areas, informational sites, or communication facilities.

(5) For parks adjoining or near any highway.

(6) For the culture and support of trees or shrubs which benefit any highway by aiding in the maintenance and preservation of the roadbed.

(7) For drainage in connection with any highway.

(8) For the maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public.

(9) For the construction and maintenance of stock lanes or trails.

(10) For the construction and maintenance or replacement of private or public drainage systems, or natural water or drainage courses made necessary by highway construction.

(11) For providing land or other real property easements or rights of way for necessary relocation of existing utilities, utility easements, or other easements for facilities or purposes then in place or in effect upon a proposed right of way.

History: En. Sec. 8-103, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Market Value of Condemned Land

Where highway commission condemned land for purposes of gaining an easement for the construction and maintenance of a state highway, and not for obtaining a deposit of gravel, sand, and other materials on the land, testimony as to the value of such materials was inadmissible as speculative, remote and con-

jectural and not within the purpose of former section 32-1615 (c). *State Highway Commission v. Mott*, 142 M 402, 384 P 2d 922.

Railroad Right of Way

Former section 32-1615 (k) permitted the state to condemn land in order to provide right of way for a railroad being

moved to allow construction of public highways. State ex rel. De Puy v. District Court, 142 M 328, 384 P 2d 501.

Highway Commission, 141 M 253, 370 P 2d 486, 488.

Rental of Unused Right of Way

The 1961 amendment of former section 32-1615 so as to give express authority for the rental of unused right of way rendered moot a taxpayer's action to restrain the highway commission from granting an encroachment permit, where there was no indication that the permit, when granted, would violate the terms of the statutory amendment. Wilson v. State

Transfer of Land

Any manner of transferring unused highway right of way which was inconsistent with former section 32-1615 was by implication excluded. Wilson v. State Highway Commission, 140 M 253, 370 P 2d 486, 488.

The state highway commission cannot give away or loan gratuitously the use of an unused highway right of way. Wilson v. State Highway Commission, 140 M 253, 370 P 2d 486, 488.

32-3904. Exercise of right of eminent domain—presumption. (1) Whenever the commission cannot acquire lands or other property or interests therein at a price or cost which it deems reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landholders.

(2) It shall not so direct the attorney general or any county attorney until it adopts a resolution declaring that:

(a) Public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in section 8-103 [32-3903].

(b) The interest described in the resolution and sought to be condemned is necessary for the highway or improvement.

(c) The highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

(3) The resolution shall create and establish a disputable presumption:

(a) Of the public necessity of the proposed highway or improvement.

(b) That the taking of the interest sought is necessary therefor.

(c) That the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

History: En. Sec. 8-104, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Burden of Proof

Where commission condemned defendant's land to build bypass through it rather than reconstruct highway through town, it became incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the commission's action, whereas the commission had only to establish that the taking of the property was reasonably necessary for rebuilding the highway. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283.

Judicial Interference

It is not within the province of the judicial branch of government to interfere with the exercise of eminent domain. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283.

Necessity of Use

Even when necessity has been challenged on the ground of arbitrariness or excessiveness of the taking, condemnor still has discretion to determine the location, route and area of the land to be taken. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283.

Power To Condemn

The power of eminent domain is vested exclusively in the legislature, and can be exercised only by the legislature and those agencies to whom it has delegated the power. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Selection of Route

Highway commission did not abuse its

discretion in taking farm land by eminent domain even though it was shown that town through which old highway had passed would be financially harmed and bypass would cost more to build, since the resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

32-3905. Acquisition of whole parcel—sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes, leaving the remainder in such shape or condition as to be of little market value, or to give rise to claims or litigation over severance or other damage, the commission may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in such a shape or size as to come within the provisions of section 11-614, the commission shall prepare and file the required plat in the office of the county clerk and recorder.

History: En. Sec. 8-105, Ch. 197, L. 1965.

Amount of Property Which May Be Taken

Trial court did not exceed powers under statute when it limited amount of property sought to be appropriated by state to that portion of property actually needed for proposed highway improvement because question whether public interest required taking of entire parcel was question of fact to be determined by court;

preliminary order of court limiting amount of appropriation to that actually required for construction of city street improvements was supported by evidence that excess land retained some value as separate parcel notwithstanding commission's argument that remaining land was financial remnant of such value as to be of little market value and give rise to claims over severance and other damages. *State Highway Commission v. Chapman*, 152 M 73, 446 P 2d 709.

32-3906. Power to acquire for future. (1) The power conferred by this chapter [chapters 39 and 40 of this title] to acquire interests in lands or other real property includes power to acquire for reasonably foreseeable future needs.

(2) The commission may lease unused portions of any lands or other real property which are held for highway purposes and interstate highway rights of way which are not presently needed for highway purposes on such terms and conditions as it may fix. The commission may repair, maintain, and care for such property in order to secure rent therefrom.

(3) All rent received shall be deposited to the credit of the commission.

History: En. Sec. 8-106, Ch. 197, L. 1965.

32-3907. Road building materials. (1) Any right of way or easement acquired by the commission for construction, operation, repair, reconstruction, or maintenance of highways shall include, among others, the right to use, remove, relocate, redistribute, or otherwise dispose of any and all gravel and other road-building materials found or located within the boundaries of the right of way or easement.

(2) For the purposes of this chapter [chapters 39 and 40 of this title], such gravel or materials shall be deemed to be real property and not minerals.

History: En. Sec. 8-107, Ch. 197, L.
1965.

32-3908. No compensation in certain cases—exceptions. (1) Whenever the commission files a description and plan as provided in section 4-113 [32-2413] of this code, no consideration, allowance or assessment of values or compensation shall be made in the purchase or condemnation of any buildings or improvements or subdivisions placed or erected on the land covered by the plan after the filing.

(2) The establishment of the highway location covered by the description and plan shall be ineffective one year after filing if no action to condemn or acquire the property has been commenced.

(3) Nothing in this section or in section 4-113 [32-2413] shall apply to crops or similar improvements planted on the lands described. They shall be governed by the provisions of section 93-9913.

History: En. Sec. 8-108, Ch. 197, L.
1965.

32-3909. Exchange of interests in real property. (1) The commission may determine that any interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of any highway. It may then exchange any such interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The commission may establish the manner and terms and conditions for such exchange.

(2) The owner from whom such interest was originally acquired by the state, or his successor in interest, shall have the right to require the commission to offer such land for sale in the manner set forth in sections 8-110 and 8-111 [32-3910 and 32-3911]. The commission shall notify such owner or successor in interest of its intention to exchange such interest. The owner shall make his demand for sale by registered mail to the commission within ten (10) days after receipt of notice from the commission.

History: En. Sec. 8-109, Ch. 197, L.
1965.

32-3910. Sale of interests in real property. The commission may sell any interest in real property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of any highway. If the interest is reasonably of a value in excess of one hundred dollars (\$100), sale shall be made to the highest bidder at public auction or by sealed bids as the commission may decide. The sale shall be conducted as provided in section 8-111 [32-3911].

History: En. Sec. 8-110, Ch. 197, L.
1965.

32-3911. Conduct of sale. (1) The commission shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for two (2) successive weeks. Sale shall be held at the office of the commission at the capitol.

(2) Before any sale of any interest having a value in excess of one hundred dollars (\$100), the commission shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) No sale shall be made of any interest unless it has been appraised within three (3) months prior to the date of the sale. No sale shall be made for less than ninety per cent (90%) of the appraised value.

(4) No title to any interest shall pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the commission.

History: En. Sec. 8-111, Ch. 197, L. 1965.

32-3912. Option of original owner or successor in interest to purchase at sale price. The owner from whom the interest was originally acquired, or his successor in interest, shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. The offer shall be sent to the commission by registered mail within ten (10) days from the date of the sale.

History: En. Sec. 8-112, Ch. 197, L. 1965.

32-3913. Private sale if no bid or offer. (1) If, after proper notice is published, the commission receives neither bid at public sale nor offer from the original owner of his successor in interest, it may at any time thereafter sell the interest at private sale. At such sale, the commission may accept as the purchase price an amount of money not less than ninety per cent (90%) of the appraised value.

(2) No title to any interest shall pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the commission.

History: En. Sec. 8-113, Ch. 197, L. 1965.

32-3914. Sale of personal property—maps, books, other printed matter.

(1) The commission may sell at public or private sale, as it may determine, any interest in personal property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of any highway.

(2) The commission may sell at public or private sale, as it may determine, maps, books, pamphlets, or other printed matter, prepared or acquired by the commission. The commission may sell copies of any highway records to the public and may set reasonable prices therefor.

(3) The proceeds from sales made under the provisions of this section shall be paid into the state treasury to the credit of the commission.

History: En. Sec. 8-114, Ch. 197, L. 1965.

32-3915. Conveyances—execution—contents. (1) Any land or interest therein sold by the commission shall be conveyed only when full payment has been made therefor. It shall be conveyed by a deed or patent of conveyance without covenants which recites that it was issued under the provisions of this part [chapter].

(2) The deed or patent shall contain a reservation of easements for rights of way for the benefit of the United States, and all other reservations to which the land conveyed may be subject.

(3) The deed or patent shall be signed by the governor, or, in case of his absence or inability, the lieutenant governor. It shall be attested by the secretary of state and have attached the great seal of the state. It need not be acknowledged.

History: En. Sec. 8-115, Ch. 197, L. 1965.

32-3916. Rendering irrigable lands unusable—unpaid construction costs. Whenever the commission acquires irrigable land for highway purposes, or so acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.

The commission shall also pay a lump-sum amount to the district sufficient to produce on an amortized basis for a reasonable period not to exceed ninety (90) years, a sum of money equal to the annual increase in operation and maintenance costs against the remaining lands under irrigation in the district resulting from the severance from the district of the lands acquired by the commission and not overcome by bringing in new or additional land under irrigation. For the purpose of determining the amount of said lump-sum payment, the annual operation and maintenance assessment of the district shall be considered to be the average for the five (5) years, or so many years as the district has assessment experience, if less than five (5) years, preceding the date of acquisition.

History: En. Sec. 8-115, Ch. 197, L. 1965; amd. Sec. 1, Ch. 299, L. 1969.

Amendments

The 1969 amendment added the second paragraph.

Effective Date

Section 2 of Ch. 299, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

Cost of Future Operation and Maintenance

State highway commission is not obligated to pay irrigation district for future cost of operation and maintenance attributable to lands taken within irrigation district for highway purposes since lands taken will not continue to benefit from services of irrigation district, notwithstanding fact that takings have reduced total irrigable acreage of district and thereby increased per acre cost of operation and maintenance of district. *Helena Valley Irrig. Dist. v. State Highway Commission*, 150 M 192, 433 P 2d 791.

32-3917. Abandonment or vacation of federal-aid or state highways.

Every federal-aid or state highway once established must continue until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by a proper order of the commission.

History: En. Sec. 8-117, Ch. 197, L. 1965.

32-3918. Highway crossing railroad, canal, or ditch. (1) Whenever any federal-aid or state highway is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must, at their expense, so prepare the railroad, canal, or ditch that the highway may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-118, Ch. 197, L. 1965.

32-3919. Rights of way for toll bridges. (1) The authority may acquire by purchase or otherwise necessary rights of way for any toll bridge and approaches. It may exercise the right of eminent domain in the name of the state for those purposes.

(2) Whenever the authority cannot acquire by purchase any right of way which it deems necessary, it may direct the attorney general or any county attorney to procure it by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landowners.

(3) A right of way is hereby given, dedicated, and set apart for toll bridges and approaches thereto, through, over, upon, or across:

(a) Any property of the state, including highways.

(b) Any county road.

(c) Any street or alley.

Acquisition and use for toll bridge and approach purposes shall be deemed a superior and more necessary public use than the public use or purpose to which the highway, road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-119, Ch. 197, L. 1965.

32-3920. Acquisition of property for controlled access facility. (1) The highway authorities of the state, counties, incorporated cities and towns, respectively, or in co-operation one with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(2) A right of way is hereby given, dedicated, and set apart for controlled access highways or controlled access facilities through, over,

upon, or across any county road and any street or alley intersecting a controlled access highway. Acquisition of any county road, street, or alley for use as a controlled access highway or controlled access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-120, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Judicial Determination of Necessity

In adopting former section 32-2006 (controlled access highway law) the legislature is presumed to have considered sections 93-9905 and 93-9911, R. C. M. 1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

32-3921. Payment of moving expenses authorized. The payment of moving expenses shall be made to eligible persons in accordance with the provisions of this act and such rules and regulations as shall be adopted by the Montana highway commission.

History: En. Sec. 1, Ch. 212, L. 1969.

Title of Act

An act to provide for relocation assist-

ance for persons affected by real property acquisitions for state highway purposes, and amending section 93-9913, R. C. M. 1947.

32-3922. Highway commission to adopt rules and regulations. The highway commission is authorized to adopt rules and regulations to implement the payment of expenses as authorized by this act.

History: En. Sec. 2, Ch. 212, L. 1969; amd. Sec. 1, Ch. 426, L. 1971.

Amendments

The 1971 amendment deleted "moving" before "expenses"; and deleted a former second sentence reading, "Such rules and regulations may include provisions authorizing payments made to individuals and families of fixed amounts not to exceed two hundred dollars (\$200) in lieu of their respective reasonable and necessary moving expenses."

32-3923. Definitions. As used in this act:

(a) "Displaced person" means any individual, family, business or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway.

(b) "Individual" means a person who is not a member of a family.

(c) "Family" means two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(d) "Business" means any lawful activity conducted primarily for the purchase and resale, manufacture, processing or marketing of products, commodities, or other personal property; or for the sale of services to the public; or by a nonprofit corporation.

(e) "Farm operation" means any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or com-

modities in sufficient quantity to be capable of contributing materially to the operator's support.

History: En. Sec. 3, Ch. 212, L. 1969.

32-3924. Advisory assistance. (a) The commission is authorized to give relocation advisory assistance to any individual, family, business or farm operation displaced because of the acquisition of real property for any project on the state highway systems.

(b) In giving such assistance, the commission may establish a temporary local relocation advisory assistance office to assist in obtaining replacement facilities for individuals, families and businesses which must relocate because of the acquisition of right of way for any project on the state highway systems.

History: En. Sec. 4, Ch. 212, L. 1969.

32-3925. Compensation for moving expense as part of cost of construction—fixed payments in lieu of actual expense—dwelling—business or farm operation. (a) As a part of the cost of construction the commission may compensate a displaced person for his actual and reasonable expense in moving himself, family, business or farm operation, including moving personal property, actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the state, and actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person who moves from a dwelling who elects to accept the payments authorized by this subdivision in lieu of the payments authorized by subdivision (a) of this section may receive a moving expense allowance, determined according to a schedule established by the commission not to exceed three hundred dollars (\$300), and in addition a dislocation allowance of two hundred dollars (\$200).

(c) Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment authorized by this subdivision in lieu of the payment authorized by subdivision (a) of this section, may receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than two thousand five hundred dollars (\$2,500) nor more than ten thousand dollars (\$10,000). In the case of a business, no payment shall be made under this subdivision unless the commission is satisfied that the business cannot be relocated without a substantial loss of patronage, and is not a part of a commercial enterprise having at least one (1) other establishment, not being acquired, which is engaged in the same or similar business. For purposes of this subdivision, the term "average annual net earnings" means one-half ($\frac{1}{2}$) of any net earnings of the business or farm operation, before federal and state income taxes, during the two (2) taxable years immediately preceding the taxable year in which such business or farm operation moves

from the real property acquired for such project or during such other period as the commission determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during such two (2) year period. To be eligible for the payment authorized by this subdivision the business or farm operation must make its state income tax returns available and its financial statements and accounting records available for audit and confidential use to determine the payment authorized by this subdivision.

History: En. Sec. 5, Ch. 212, L. 1969; amd. Sec. 2, Ch. 426, L. 1971.

Amendments

The 1971 amendment added the language commencing with "actual direct losses" and continuing to the end of subdivision (a); increased the limits for moving expense allowance and dislocation allowance from \$200 to \$300, and from \$100 to \$200 respectively in subdivision

(b); inserted the provision for a minimum payment of \$2,500 in the first sentence of subdivision (c); increased the maximum payment under the first sentence of subdivision (c). from \$5,000 to \$10,000; and inserted "or during such other period as the commission determines to be more equitable for establishing such earnings" in the latter part of the third sentence of subdivision (c).

32-3926. Additional payment for realty with qualified dwelling—period of occupancy—amount—owner must subsequently purchase dwelling. (a) In addition to the payments authorized by section 32-3925, the commission, as a part of the cost of construction, may make payments to the owner of real property acquired for a project on the state highway systems which is improved with a single, two (2) or three (3) family dwelling, actually owned and occupied by the owner for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the property.

(b) A payment not to exceed fifteen thousand dollars (\$15,000), shall be the amount, if any, which, when added to the acquisition payment, equals the reasonable price required for a comparable dwelling determined, in accordance with standards established by the commission, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and place of employment and available on the market.

(c) A payment, if any, which will compensate such displaced person for any increased costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such payment shall be made only if the dwelling acquired by the state was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of such dwelling. Such payment shall be equal to the excess in the aggregate interest and other debt service cost of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling under the remainder term of the mortgage on the acquired dwelling reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(d) The payment of reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incidental to the purchase of replacement dwelling but not including pre-paid expenses.

(e) Such payment shall be made only to a displaced owner who purchases and occupies a dwelling, that meets standards established by the commission, within one (1) year subsequent to the date on which he is required to move from the dwelling acquired for the project.

History: En. Sec. 6, Ch. 212, L. 1969; amd. Sec. 3, Ch. 426, L. 1971.

Amendments

The 1971 amendment substituted "one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the property" for "one (1) year prior to the first written offer for the

acquisition of such property" in subsection (a); increased the maximum payment under subsection (b) from \$5,000 to \$15,000; substituted "reasonable price" for "average price" in subsection (b); inserted subsections (c) and (d); redesignated former subsection (c) as subsection (e); and made minor changes in style and phraseology.

32-3927. Additional payment for realty with other dwelling—period of occupancy—amount. (a) In addition to the payment authorized by section 32-3925, as a part of the cost of construction, the commission may make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under section 32-3926, which dwelling was actually and lawfully occupied by such individual or family for not less than ninety (90) days prior to the first written offer for the acquisition of such property.

(b) Such payment, not to exceed four thousand dollars (\$4,000), shall be the additional amount which is necessary to enable such individual or family to lease or rent for a period not to exceed four (4) years, or to make the down payment on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, except that if the amount of the down payment to purchase exceeds two thousand dollars (\$2,000), such individual or family must equally match any such amount in excess of two thousand dollars (\$2,000) in making the down payment.

History: En. Sec. 7, Ch. 212, L. 1969; amd. Sec. 4, Ch. 426, L. 1971.

Amendments

The 1971 amendment increased the maximum payment under subsection (b) from

\$1,500 to \$4,000; increased the rental period specified in subsection (b) from two to four years; added the exception to subsection (b); and made minor changes in style.

32-3928. Review of application for assistance—highway commission's decision final. Any displaced person aggrieved by a determination as to eligibility for a payment authorized by this act, or the amount of a payment, may have his application reviewed by the highway commission, whose decision shall be final.

History: En. Sec. 8, Ch. 212, L. 1969.

32-3929. Rules and regulations. The commission is authorized to adopt rules and regulations to implement this act, and such other rules and regulations relating to highway relocation assistance as may be neces-

sary or desirable under federal laws and the rules and regulations promulgated thereunder. Such rules and regulations shall include provisions relating to:

(a) A moving expense allowance, as provided in subdivision (b) of section 32-3925, for a displaced person who moves from a dwelling, determined according to a schedule, not to exceed three hundred dollars (\$300);

(b) The conditions for decent, safe, and sanitary dwellings;

(c) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the commission; and

(d) Eligibility of displaced persons for relocation assistance payments, the procedure for such persons to claim such payments and the amounts thereof.

History: En. Sec. 9, Ch. 212, L. 1969; amd. Sec. 5, Ch. 426, L. 1971.

sion (b); and made a minor change in style.

Amendments

The 1971 amendment increased the limit on moving expense allowance under subdivision (a) from \$200 to \$300; substituted "conditions" for "standards" in subdivi-

Effective Date

Section 6 of Ch. 426, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

32-3930. Assistance payments not income for state tax purposes. No payment received by a displaced person under this article shall be considered as income for Montana state income tax purposes.

History: En. Sec. 10, Ch. 212, L. 1969.

32-3931. No new element of condemnation damages created. Nothing contained in this act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of damages not in existence on the date of enactment of this act.

History: En. Sec. 11, Ch. 212, L. 1969.

CHAPTER 40—ACQUISITION AND DISPOSITION OF PROPERTY BY COUNTY

- Section 32-4001. Rights of way for county roads.
 32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road.
 32-4003. Contents of petition.
 32-4004. Investigation of petition—notice.
 32-4005. Opening of road—survey.
 32-4006. Determination of damages—declaration as road.
 32-4007. Award of damages deemed rejected—proceedings to secure right of way.
 32-4008. Damages and expenses to be paid out of county road fund.
 32-4009. Change of road upon petition.
 32-4010. Notice to district supervisor of opening of county road.
 32-4011. Record of opening or changing road.
 32-4012. Deeds and judgments for right of way—recording.
 32-4013. County road crossing railroad, canal or ditch.
 32-4014. Abandonment or vacation of county roads.
 32-4015. Stock lanes.
 32-4016. Board to transfer responsibility for right of way.
 32-4017. Acquisition of property for public ferries and wharves.
 32-4018. Acquisition of property for controlled access facility.

32-4001. Rights of way for county roads. (1) Each board shall acquire rights of way for county roads and discontinue or abandon them only upon proper petition therefor.

(2) By taking or accepting interests in real property for county roads, the public acquires only the right of way and the incidents necessary to enjoying and maintaining it.

History: En. Sec. 8-201, Ch. 197, L. 1965. of Chapter 8 of the Highway Code, entitled "Acquisition and Disposition by County."

Compiler's Note

This chapter was designated as Part 2

32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road. Any ten, or a majority, of the freeholders of a road district, taxable therein for road purposes, may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district. If the county is not divided into districts the entire county shall be one road district. When the road petitioned for is on the dividing line between two counties, the same procedure must be followed, except that a copy of the petition must be presented to each board. The two boards shall act jointly.

History: En. Sec. 8-202, Ch. 197, L. 1965.

32-4003. Contents of petition. The petition must set forth: (1) The particular road or roads to be opened, established, constructed, changed, discontinued, or abandoned.

(2) The general route thereof.

(3) The lands and owners affected.

(4) Whether the owners who can be found consent thereto.

(5) Where consent is not given, the probable cost of the right of way.

(6) The necessity for, and advantage of, the petitioned action.

History: En. Sec. 8-203, Ch. 197, L. 1965.

32-4004. Investigation of petition—notice. (1) At its next regular or special meeting, or in any case, at a date within thirty (30) days after filing of any petition, the board shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

(2) No more than one member of the board and the county surveyor shall make the investigation. After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes.

(3) Within ten (10) days thereafter, the board shall cause notice of its decision to be sent by certified mail to all owners of land abutting on the road petitioned for. The owners shall be those listed on the last county assessment roll.

History: En. Sec. 8-204, Ch. 197, L. 1965.

32-4005. Opening of road—survey. If the petition is for the opening of a county road, and the board grants the prayer, ordering the road opened, it shall proceed at once to have it opened to the public and declare it to be a county road. The board may order the county surveyor, or some other competent surveyor, if the county surveyor is incompetent to survey and plat the road. He shall file his fieldnotes with the county clerk and recorder. The surveyor shall receive seven dollars (\$7) per day and actual traveling expenses.

History: En. Sec. 8-205, Ch. 197, L. 1965.

32-4006. Determination of damages—declaration as road. (1) Whenever the board makes an order establishing or changing any road, it must find the amount of damages sustained by each owner or claimant of lands or improvements thereon affected by the road. Damages shall be paid to the owner or claimant, if known, upon his showing or establishing his right or title to the lands or improvements and furnishing proper deeds and releases.

(2) Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded.

(3) If all awards are accepted, the board shall declare the road a county road and open it.

History: En. Sec. 8-206, Ch. 197, L. 1965.

32-4007. Award of damages deemed rejected—proceedings to secure right of way. (1) If any award of damages provided for in section 8-206 [32-4006] is not accepted within twenty (20) days after the date of the award, it shall be deemed rejected by the owner. The board shall, by order, direct that proceedings to procure the right of way be instituted under sections 93-9901—93-9926 by the county attorney against all nonaccepting landowners.

(2) Such proceedings shall in no way be affected or invalidated by the failure of the board to give any notice or do any act provided for in this part [chapter]. Failure to give any such notice shall not be considered by any court as a defense in any proceedings for procuring right of way.

(3) However, in such proceedings it shall be made to appear that the board shall have declared by resolution that the right of way was necessary and desirable.

History: En. Sec. 8-207, Ch. 197, L. 1965.

32-4008. Damages and expenses to be paid out of county road fund. All awards of damages estimated by the board or made by the proper court and all expenses, including those of the members of the board and their per diem authorized by section 16-912, shall be paid out of the county road fund on the order of the board.

History: En. Sec. 8-208, Ch. 197, L. 1965.

32-4009. Change of road upon petition. (1) A majority of the freeholders or owners residing on any county road, or portion thereof, may petition the board in writing to so change the road or portion as to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in section 8-204 [32-4004]. After investigation, the board may order the making of the change if it can be done without material damage, injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear all or such portion of the cost and expense of making it as the board may order.

History: En. Sec. 8-209, Ch. 197, L. 1965.

32-4010. Notice to district supervisor of opening of county road. When a county road is to be opened, established, constructed, changed, abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish him with a certified copy of the order of the board.

History: En. Sec. 8-210, Ch. 197, L. 1965.

32-4011. Record of opening or changing road. When a county road is opened or changed, the findings of the board, the plat fieldnotes, and the report of the surveyor shall be recorded in the office of the county clerk in a book kept for that purpose.

History: En. Sec. 8-211, Ch. 197, L. 1965.

32-4012. Deeds and judgments for right of way—recording. (1) When a right of way is voluntarily given or purchased, an instrument in writing, conveying the right of way and incidents thereto, must be signed and acknowledged by the person making it. It must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right of way is condemned, a certified copy of the judgment of the court must be made. It must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments shall particularly describe the land.

History: En. Sec. 8-212, Ch. 197, L. 1965.

32-4013. County road crossing railroad, canal or ditch. (1) Whenever any county road is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must at their expense, so prepare the railroad, canal, or ditch that the road may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-213, Ch. 197, L. 1965.

32-4014. Abandonment or vacation of county roads. All county roads once established must continue to be county roads until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by the order of the board. No order to abandon any county road shall be valid unless preceded by notice and public hearing.

History: En. Sec. 8-214, Ch. 197, L. 1965.

32-4015. Stock lanes. [1] Upon presentation of a proper petition, each board may establish, alter, or vacate stock lanes when it deems it expedient and necessary for the convenience of the public and for the convenience of travel on roads now established. Any lane may adjoin and parallel a county road and shall be described in the petition for creation and in the order of the board creating it.

(2) A stock lane is a county road established and maintained for the driving and travel of livestock. It shall be not less than sixty (60) feet wide. The width shall be determined by the board in the order creating it.

(3) The provisions of sections 8-201—8-214 of this part [32-4001 to 32-4014 of this chapter] and the general laws relating to establishing, altering, and vacating county roads including the exercise of the right of eminent domain shall apply to stock lanes. References in all petitions, orders, and proceedings shall be to "stock lanes" in order to differentiate them from other highways.

History: En. Sec. 8-215, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed designation for subsection (1).

32-4016. Board to transfer responsibility for right of way. Each board shall transfer its control over, and responsibility for, any county road when the commission notifies it that: (1) A federal or state highway has been established and definitely located over a county road.

(2) Funds are available for immediate construction of the highway.

(3) The highway will be improved and maintained by the commission.

History: En. Sec. 8-216, Ch. 197, L. 1965.

32-4017. Acquisition of property for public ferries and wharves. (1) Upon the proper showing, as provided in section 16-1116, each board may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of sections 93-9901—93-9926.

(3) No board shall establish or maintain a county ferry or wharf with a landing-place in any incorporated city or town which, by its charter, is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

History: En. Sec. 8-217, Ch. 197, L. 1965.

32-4018. Acquisition of property for controlled access facility. The highway authorities of the state, counties, incorporated cities, and towns, respectively or in co-operation each with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

History: En. Sec. 8-218, Ch. 197, L. 1965.

CHAPTER 41—CONTRACTS OF STATE HIGHWAY COMMISSION

Section 32-4101. Letting of contracts on state and federal-aid highways.

32-4102. Competitive bidding.

32-4103. Bidder's security—contractor's bond.

32-4101. Letting of contracts on state and federal-aid highways. All contracts for work on state and federal-aid highways, including portions in cities and towns, and all contracts entered into under section 11-1023 shall be let by the commission. Except as otherwise specifically provided, the commission may enter such types of contracts and upon such terms as it may decide. All contracts shall meet the requirements of sections 41-701—41-703. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-101, Ch. 197, L. 1965.

designated as Chapter 9 of the Highway Code, entitled "Contracts." This chapter was designated as Part 1 of Chapter 9, entitled "Contracts of Commission."

Compiler's Note

Chapters 41 and 42 of this title were

32-4102. Competitive bidding. (1) When the estimated cost of any work exceeds one thousand dollars (\$1,000), the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules and regulations. However, except when prohibited by federal law, the commission must make awards and contracts in accordance with the provisions of sections 82-1924 and 82-1926.

(2) If the commission finds that such work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on any highway construction work financed in whole or in part by federal funds, the United States secretary of commerce affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with any board of county commissioners. Such contracts may authorize each county to acquire rights of way for, survey, and construct farm to market, secondary, or

feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and each board.

History: En. Sec. 9-102, Ch. 197, L. 1965.

32-4103. Bidder's security—contractor's bond. (1) Whenever the commission calls for competitive bidding, each bidder shall meet all requirements of section 6-501 [R. C. M., 1947].

(2) Every contractor awarded a contract by the commission shall meet all requirements set forth in sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the commission, a contract shall not be completed until the commission, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-103, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed references to R. C. M., 1947.

CHAPTER 42—CONTRACTS OF COUNTIES AND LOCAL IMPROVEMENT DISTRICTS

- Section 32-4201. Contracts for county roads.
 32-4202. Bids on county road contracts—award of contract.
 32-4203. County road contractors to furnish bonds.
 32-4204. Letting of contract for bridge.
 32-4205. Letting of contract by local improvement district—bids.
 32-4206. Improvement district contract—award.
 32-4207. Execution of contract by board—limit on liability.

32-4201. Contracts for county roads. (1) When the estimated cost of opening, establishing, constructing, changing, abandoning, discontinuing, or widening a county road exceeds one thousand dollars (\$1,000), the work may, in the discretion of the board, be let by contract, unless the board shall find that such work may be otherwise done at less cost.

(2) Before any such contract shall be let, the board shall advertise for bids at least once a week for two (2) consecutive weeks, in a newspaper of general circulation in the county.

History: En. Sec. 9-201, Ch. 197, L. 1965.

of Chapter 9 of the Highway Code, entitled "Contracts of Counties and Local Improvement Districts."

Compiler's Note

This chapter was designated as Part 2

32-4202. Bids on county road contracts—award of contract. Each bidder shall comply with the requirements of section 6-501 [R. C. M., 1947]. The contract shall be awarded to the lowest responsible bidder in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926, and the board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-202, Ch. 197, L. 1965. **Compiler's Note**

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4203. County road contractors to furnish bonds. Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-203, Ch. 197, L. 1965.

32-4204. Letting of contract for bridge. (1) All bids for construction or repair of bridges shall meet these requirements:

(a) If the commission has adopted or established a standard plan and specifications, the bids must be submitted thereon.

(b) All bids must be sealed. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) The board may reject any and all bids. If a contract is awarded, the board shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-204, Ch. 197, L. 1965. **Compiler's Note**

The compiler has inserted the bracketed references to R. C. M., 1947.

32-4205. Letting of contract by local improvement district—bids. (1) After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall advertise for bids. The advertisement shall state generally the work to be done and shall refer to the plans and specifications. It shall also fix the time for opening bids in the office of the board. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) At that time, the committee shall open all bids. It may reject all of them and readvertise for bids. No contract shall be awarded at a greater sum than the estimate of cost provided for in part 4 of chapter 5 of this code [chapter 31 of this title].

History: En. Sec. 9-205, Ch. 197, L. 1965. **Compiler's Note**

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4206. Improvement district contract—award. (1) If the committee awards a contract, it shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Before entering upon performance of the contract, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the committee, a contract shall not be completed until the committee, while formally convened, affirmatively accepts all of the work thereunder.

(3) Partial payments may be provided for in the contract, and paid when certified by the county surveyor and committee.

History: En. Sec. 9-206, Ch. 197, L. 1965. **Compiler's Note**

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4207. Execution of contract by board—limit on liability. The contract shall be executed in the name of and on behalf of the county by the board and attested with the county seal for the use and benefit of the local improvement district. The county shall not be subject to any claim or liability in an amount greater than that agreed upon with the district in the order fixing the amount chargeable to the county.

History: En. Sec. 9-207, Ch. 197, L. 1965.

CHAPTER 43—CONTROL OF ACCESS

Section 32-4301. Policy.

32-4302. Definitions.

32-4303. Designation as controlled access highway—resolution—findings.

32-4304. Designation as controlled access highway—petition from city or county.

32-4305. Powers of highway authorities.

32-4306. Design of controlled access facility—entrance and exit restricted.

32-4307. New and existing facilities—elimination of grade crossings.

32-4308. Existing roads and streets as service roads.

32-4308.1. Maintenance of frontage roads.

32-4309. Marking of controlled access highway or facility with signs.

32-4310. Commercial enterprise or structure prohibited.

32-4311. Violations—penalties.

32-4301. Policy. The legislative assembly declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to: (1) Highways included by the bureau of public roads in the national system of interstate highways.

(2) Throughways and intersections with throughways.

(3) Such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter.

History: En. Sec. 10-101, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Chapter 10 of the Highway Code, entitled "Control of Access."

DECISIONS UNDER FORMER LAW

Judicial Determination of Necessity

In adopting the former controlled access highway law (32-2001 et seq.) the legislature is presumed to have considered sections 93-9905 and 93-9911 R. C. M.

1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

32-4302. **Definitions.** When used in this chapter: (1) "Interstate highway" means any highway now included or which shall hereafter be included as a part of the National System of Interstate Highways.

(2) "Controlled access highway" means all portions of any interstate highway, throughway, or throughway intersection which the commission shall determine and designate for through traffic, or other federal-aid or state highway over, from or to which owners or occupants of abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view. It shall also mean those portions of spurs to the interstate highway system which the commission shall determine and designate as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(3) "Controlled access facility" means and includes all streets, alleys, public roads, private roads, and ways of passage intersecting any controlled access highway and all real property contiguous to the right of way of any controlled access highway.

(4) "Existing highway" means and includes all highways, roads, and streets established constructed, and in use on March 2, 1955. It shall not include highways, roads, or streets, established, constructed, and in use after that date, or highways, roads, or streets, or portions thereof relocated after that date.

(5) "Arterial highway" means any state highway designated by agreement between the commission and the secretary of commerce as part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(6) "Throughway" means any portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(7) "Throughway intersection area" means an area within a radius of three hundred (300) feet from the point of intersection of the center lines of a throughway and any public road, street, or highway.

(8) "Highway authorities" or "authority" means the entities in state, county, and municipal governments which have authority to construct, repair, and maintain highways, roads, and streets.

History: En. Sec. 10-102, Ch. 197, L. 1965.

32-4303. **Designation as controlled access highway—resolution—findings.** (1) No portion of any interstate highway, throughway or throughway intersection, or other federal-aid or state highway shall be designated

as a controlled access highway unless the commission shall adopt a resolution so designating it. The resolution shall be adopted by the majority vote of the members in attendance at any regular or special meeting. In it, the commission shall find and determine:

(a) That it is necessary and desirable that the owners or occupants of the abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view.

(b) That it is necessary and desirable that the rights of, or easements to access, light, air, or view be acquired by the state so as to prevent such portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets, alleys, public or private roads or ways of passage.

(2) The resolution shall contain a statement of the reasons for its adoption, and shall set forth the location, distance, and termini of the portion of the highway designated as a controlled access highway.

History: En. Sec. 10-103, Ch. 197, L. 1965; amd. Sec. 1, Ch. 215, L. 1969.

Amendments

The 1969 amendment deleted former subsection (2) which read, "The require-

ment by the United States that access must be controlled shall be a basis of necessity for the passing of the resolution" and renumbered former subsection (3) as subsection (2).

32-4304. Designation as controlled access highway—petition from city or county. (1) No portion of a throughway or throughway intersection, or other federal-aid or state highway within the limits of an incorporated city or town shall be designated a controlled access highway except upon petition in writing from its governing body.

(2) If the portion lies wholly or partially outside of any such corporate limits, the petition must come from the board of the county within which the portion is located.

(3) Any such petition, once filed with the commission, shall be irrevocable unless the commission concurs in a request to revoke it.

History: En. Sec. 10-104, Ch. 197, L. 1965.

32-4305. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled access facilities for public use. Each such authority shall, by resolution, make the findings and determinations provided for in section 10-103 [32-4303] of this chapter.

(2) Within incorporated cities and towns, and upon county roads, each authority shall be subject to the consent of the appropriate governing body.

(3) Each authority may also exercise, with relation to controlled access facilities, any and all additional authority now or hereafter vested in it over highways, roads, or streets within its respective jurisdiction.

It may regulate, restrict, or prohibit the use of controlled access facilities by any vehicles or traffic.

History: En. Sec. 10-105, Ch. 197, L. 1965.

32-4306. Design of controlled access facility—entrance and exit restricted. (1) Each highway authority may so design any controlled access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which the facility is intended. In so doing, it may divide and separate any controlled access facility into separate roadways by the construction of raised curbsings, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and other devices.

(2) No person shall have any right to enter upon, exit from, or cross any controlled access facility except at designated points at which access may be permitted. Terms and conditions governing such access may be specified from time to time.

History: En. Sec. 10-106, Ch. 197, L. 1965.

32-4307. New and existing facilities—elimination of grade crossings.

(1) Each highway authority may provide for elimination of intersections at grade of controlled access highways or controlled access facilities with existing federal-aid and state highways, county roads, and city or town streets. Elimination shall be accomplished at the boundary of the controlled access right of way.

(2) After the establishment of any controlled access highway or facility, no private or public highway or street which is not a part of the highway or facility shall intersect it at grade. No street, road, highway, or other public way shall be opened into or connected with any controlled access highway or facility without the prior consent and approval of the appropriate highway authority.

(3) The commission may, whenever it determines that the public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled access highways in sparsely populated rural areas. The commission shall have sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways and other federal-aid and state highways.

History: En. Sec. 10-107, Ch. 197, L. 1965.

32-4308. Existing roads and streets as service roads. (1) In connection with the development of any controlled access highway or facility, each highway authority may plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets. Each authority may designate as local service roads and streets any existing road or street.

(2) Service roads and streets shall be of appropriate design. They shall be separated from the controlled access highway or facility by means of all devices determined to be necessary to carry out the provisions of this chapter.

(3) Each authority shall exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled access highways or facilities.

History: En. Sec. 10-108, Ch. 197, L. 1965.

32-4308.1. Maintenance of frontage roads. All frontage roads shall be maintained by the state highway commission of the state of Montana.

History: En. Sec. 1, Ch. 90, L. 1965. **Title of Act**

Compiler's Notes

This section was assigned inadvertently to Chapter 20 of Title 32 prior to repeal of Chapter 20 by Sec. 12-109, Ch. 197, L. 1965.

An act to provide for maintenance of frontage roads and amending section 32-2002 to define "frontage road."

32-4309. Marking of controlled access highway or facility with signs. Any controlled access highway or facility and portions thereof shall be physically marked by signs indicating to drivers of vehicles the points at which they enter and leave a controlled access area.

History: En. Sec. 10-109, Ch. 197, L. 1965.

32-4310. Commercial enterprise or structure prohibited. No commercial enterprise or structure shall be constructed or operated on the publicly owned right of way of a controlled access highway or facility or on any publicly leased land used in connection therewith.

History: En. Sec. 10-110, Ch. 197, L. 1965.

32-4311. Violations—penalties. (1) On any controlled access highway or facility it is unlawful for any person to:

(a) Drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line.

(b) Make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line.

(c) Drive any vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section or line.

(d) Drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility.

(e) Construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than five dollars (\$5) nor more than one hundred dollars (\$100), or by imprisonment in the city or county jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 10-111, Ch. 197, L. 1965.

CHAPTER 44—GOOD ROADS DAY—OBSTRUCTIONS, ENCROACHMENTS AND DEBRIS ON HIGHWAYS

- Section 32-4401. Good Roads day.
 32-4402. Injuries to highways and trees.
 32-4403. Excavations across highways—permits and bridging.
 32-4404. Liability for permitting water to overflow.
 32-4405. Highway encroachments—power to remove.
 32-4406. Notice to remove encroachment.
 32-4407. Penalty for failure to remove encroachment promptly.
 32-4408. Removal of encroachment—actions—prosecution of offenses.
 32-4409. Prosecution by county attorney.
 32-4410. Dumping garbage or other debris or refuse.

32-4401. Good Roads day. The third Tuesday in June is hereby designated "Good Roads day." The governor may annually, by public proclamation, request the people of the state to contribute toward the improvement and safety of public highways.

History: En. Sec. 11-101, Ch. 197, L. 1965. **Compiler's Note**
 This chapter was designated as Chapter 11 of the Highway Code, entitled "Miscellaneous."

32-4402. Injuries to highways and trees. (1) The malicious injury of any highway, bridge, private way, or guidepost or inscription thereon is punishable as provided in sections 94-3201 and 94-3202.

(2) Every person who, without authority, cuts down, or otherwise maliciously injures or destroys any shade or ornamental tree on any highway is punishable as provided in section 94-3202 (2).

History: En. Sec. 11-102, Ch. 197, L. 1965. **Compiler's Note**
 Section 94-3201, referred to at the end of subsection (1) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

32-4403. Excavations across highways—permits and bridging. (1)
 (a) Any person contemplating the excavation or construction of any ditch, dike, flume or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board of county commissioners.

(2) Any such bridge shall be maintained by the county.

(3) Any person obtaining a construction permit or any person using the water of such ditch, dike, flume or canal shall keep the same in repair where such water may flow over or in any way injure a public highway.

History: En. Sec. 11-103, Ch. 197, L. 1965.

32-4404. Liability for permitting water to overflow. (1) Every person who excavates or constructs or owns any ditch, dike, flume or canal, or stores, distributes or uses water for any purpose and permits the water to flow over any public highway to the injury thereof, must upon notification by the board of county commissioners, road supervisor or county surveyor of the district where such overflow occurred, repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning or using such ditch or flume who permits an overflow is liable as provided in section 94-3565.

History: En. Sec. 11-104, Ch. 197, L. 1965.

32-4405. Highway encroachments—power to remove. (1) If any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must immediately remove the same.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

History: En. Sec. 11-105, Ch. 197, L. 1965.

32-4406. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) By leaving it at his place of residence if such person resides in the county; or

(b) By posting it on the encroachment, if such person does not reside in the county.

History: En. Sec. 11-106, Ch. 197, L. 1965.

32-4407. Penalty for failure to remove encroachment promptly. If the encroachment is not removed immediately, or removal is not dili-

gently conducted, the one who causes, owns, or controls the encroachment is liable to a penalty of ten dollars (\$10) for each day the same continues.

History: En. Sec. 11-107, Ch. 197, L.
1965.

32-4408. Removal of encroachment—actions—prosecution of offenses.

(1) If the encroachment is denied, the road supervisor shall commence in the proper court an action to abate the same as a nuisance. If he recovers judgment, he may have his costs and ten dollars (\$10) for every day such nuisance remained after notice.

(2) If the encroachment is not denied, and is not removed for five (5) days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of land, or of the person owning or controlling the encroachment. He may recover the expense of removal, ten dollars (\$10) for each day the encroachment remained after notice, and costs in an action brought for that purpose.

History: En. Sec. 11-108, Ch. 197, L.
1965.

32-4409. Prosecution by county attorney. The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions heretofore provided in the name of the state of Montana. All penalties shall be paid into the general fund of the county.

History: En. Sec. 11-109, Ch. 197, L.
1965.

32-4410. Dumping garbage or other debris or refuse. (1) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) In or upon any highway, road, street, or alley of this state.

(b) In or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof, or any officer or agent or department thereof.

(c) Within two hundred yards of such public highway, road, street, or alley, or public recreational property.

(d) On privately owned property where hunting, fishing or other recreation is permitted, provided this subsection shall not apply to the owner, his agents or those disposing of debris or refuse with the owner's consent.

(2) Any person found guilty of a violation of this section shall be fined in the sum not exceeding one hundred dollars (\$100), or imprisoned in the county jail for a period not exceeding thirty (30) days, or be punished by both such fine and imprisonment, in the discretion of the court.

(3) The provisions of this section shall be enforced by all highway patrolmen, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens shall have

the right to enforce the provisions of this section on public recreational property and on private property where public recreation is permitted.

History: En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969.

Amendments

The 1969 amendment added subdivision (d) to subsection (1); in subsection (2)

increased the maximum fine from \$25.00 to \$100.00; and, in subsection (3), authorized game wardens to enforce anti-littering provisions on private property where public recreation is permitted, as well as on public recreational property.

CHAPTER 45—JUNKYARDS ALONG ROADS

Section 32-4513. Purposes of act.

32-4514. Definitions.

32-4515. License required.

32-4516. Issuance of license—fee—term—renewal.

32-4517. Restrictions as to location.

32-4518. Junkyards lawfully in existence.

32-4519. Regulations governing screening.

32-4520. Authority to acquire interest in land for screening and removal of junkyards.

32-4521. Injunction.

32-4522. Agreements with the United States.

32-4523. Interpretation.

32-4501 to 32-4512. Repealed.

Repeal

These sections (Secs. 1 to 12, Ch. 136, L. 1965), relating to the regulation of

junkyards along roads, were repealed by Sec. 13, Ch. 285, Laws 1967.

32-4513. Purposes of act. (1) For the purposes of promoting the public safety, health and welfare, and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state.

(2) The legislative assembly hereby finds and declares that junkyards which do not conform to the requirements of this act are public nuisances.

History: En. Sec. 1, Ch. 285, L. 1967.

Title of Act

An act providing for the control of junkyards; setting forth definition; restricting location along certain highways; requiring an annual license and fee; re-

quiring certain junkyards to be obscured by means of natural objects or fences; providing authority to purchase or condemn in certain situations; providing penalties for violation; and repealing sections 32-4501 through 32-4512, Revised Codes of Montana, 1947.

32-4514. Definitions. As used in this act only:

(1) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the state highway commission and approved by the secretary of transportation pursuant to the provisions of title 23, United States Code, "Highways."

(2) "Primary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the commission and approved by the secretary of transportation, pursuant to the provisions of title 23, United States Code, "Highways."

(3) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

(4) "Junkyard" means any establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk; or for the maintenance or operation of an automobile graveyard; or a garbage dump or sanitary fill.

(5) "Automobile graveyard" means any establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

History: En. Sec. 2, Ch. 285, L. 1967.

32-4515. License required. No person shall establish, operate or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right of way of any interstate or primary highway, without obtaining a license from the commission.

History: En. Sec. 3, Ch. 285, L. 1967.

32-4516. Issuance of license—fee—term—renewal. The commission shall have the sole authority to issue licenses for the establishment, maintenance and operation of junkyards within the limits herein defined. It shall charge for each such license a fee of twenty-five dollars (\$25) payable annually in advance. All licenses issued under this section shall expire on the January 1, following the date of issue. A license may be renewed from year to year upon paying to the commission the sum of twenty-five dollars (\$25) for such renewal. Proceeds from all license fees shall be deposited in the earmarked revenue fund to the credit of the state highway commission and be subject to disbursement on the order of the commission to defray the expense of administering the provisions of this act.

History: En. Sec. 4, Ch. 285, L. 1967.

32-4517. Restrictions as to location. No license shall be granted for the establishment, maintenance or operation of a junkyard within one thousand (1,000) feet of the nearest edge of the right of way of any highway on the interstate or primary systems except the following:

(1) Those which are screened by natural objects, planting, fences or other appropriate means so as not to be visible from the main traveled way of any such highway, or otherwise removed from sight.

(2) Those located within areas which are zoned for industrial use under authority of law.

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by regulations to be promulgated by the commission.

(4) Those which are not visible from the main traveled way of any such highway.

History: En. Sec. 5, Ch. 285, L. 1967.

32-4518. Junkyards lawfully in existence. (1) Any junkyard lawfully in existence on the effective date of this act which is within one thousand (1,000) feet of the nearest edge of the right of way and visible from the main traveled way of any highway on the interstate or primary systems shall be fenced or screened, if feasible, by the commission at locations on the highway right of way or in areas acquired for such purposes outside the right of way so as not to be visible from the main traveled way of any such highway.

(2) Notwithstanding any other provision of this act, any junkyard lawfully in existence on October 22, 1965, which does not conform to the requirements of this act and which the United States secretary of transportation finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

History: En. Sec. 6, Ch. 285, L. 1967.

32-4519. Regulations governing screening. The commission may promulgate rules governing the materials to be used in, and the location, planting, construction and maintenance of screening or fencing required by this act.

History: En. Sec. 7, Ch. 285, L. 1967.

32-4520. Authority to acquire interest in land for screening and removal of junkyards. (1) When the commission determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the commission determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange or condemnation such interests in lands as may be necessary to secure the relocation, removal or disposal of junkyards which were either:

(a) Lawfully in existence on October 22, 1965; or

(b) Lawfully along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) Lawfully established on or after January 1, 1968.

(3) The commission shall pay just compensation to the owner for the relocation, removal or disposal of any such junkyard.

History: En. Sec. 8, Ch. 285, L. 1967.

32-4521. Injunction. The commission may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this act for an injunction to abate such nuisance.

History: En. Sec. 9, Ch. 285, L. 1967.

32-4522. Agreements with the United States. The commission may enter into agreements with the United States secretary of transportation as provided in title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems, and take action in the name of the state to comply with the terms of such agreements.

History: En. Sec. 10, Ch. 285, L. 1967.

32-4523. Interpretation. Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution which are more restrictive than the provisions of this act.

History: En. Sec. 11, Ch. 285, L. 1967.

Separability Clause

Section 12 of Ch. 285, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or

more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 13 of Ch. 285, Laws 1967 read "Sections 32-4501 through 32-4512, Revised Codes of Montana, 1947, are repealed."

CHAPTER 46—TRAFFIC SAFETY PROGRAM

Section 32-4601. Purpose of act.

32-4602. Definitions.

32-4603. Montana highway traffic safety board.

32-4604. Organization.

32-4605. Duties.

32-4606. Funds.

32-4607. Local programs.

32-4601. Purpose of act. For the purpose of promoting the public safety, health and welfare, and to reduce traffic deaths, injuries and property losses resulting from traffic accidents, it is hereby declared to be in the public interest to establish a highway traffic safety program; provide for the administration thereof; implement, modernize and improve the following traffic safety activities: driver performance, including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries and deaths; to improve and establish a system of vehicle registration, vehicle operation and vehicle inspection; to assist in the improving of highway design and maintenance, including lighting, markings and surface treatment to improve safety thereof; establish an effective traffic control system; promote the adoption of a uniform vehicle code and law; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including, but not limited to, communications, medical or mechanical assistance, and ambulance service for injured persons; establish an effective compilation and storage program of reports and records through electronic data processing.

History: En. Sec. 1, Ch. 177, L. 1967.

Title of Act

An act for the establishment of a state highway traffic safety program, setting forth definitions; establishing administration thereof, authorizing political subdivision participation, permitting the acceptance of federal funds, the collection and expenditure of monies; providing for

programs for driver education training and certification of instructors, regulation of schools including licensing thereof; adult driver training and retraining programs; research, development and procurement of practice driving facilities, simulators and teaching aids, licensing, revocation and regulation of drivers and operators of all motor vehicles.

32-4602. Definitions. (1) As used in this act, "governor" shall mean the governor of the state of Montana.

(2) "Highway traffic safety program" means a program designed to reduce traffic accidents and deaths, injuries to persons and damage to property. Such program shall be in accordance with uniform standards as are or may be established by the secretary of commerce of the United States under title 23, United States Code Annotated, as amended. Nothing herein shall restrict or prohibit the establishment of standards which enlarge or implement the federal standards.

(3) "Political subdivisions" shall mean every county, incorporated city or town and school district within the boundaries of the state.

(4) "Board" shall mean the Montana highway traffic safety board.

History: En. Sec. 2, Ch. 177, L. 1967.

32-4603. Montana highway traffic safety board. There is hereby created a Montana highway traffic safety board. The board shall be appointed by the governor.

History: En. Sec. 3, Ch. 177, L. 1967.

Cross-References

Board abolished and functions transferred, sec. 82A-902(1).

32-4604. Organization. The Montana highway traffic safety board shall meet once each month at the state capitol. It shall provide for office space, clerical help and such other personnel as may be necessary to carry out the intent of this act.

History: En. Sec. 4, Ch. 177, L. 1967.

32-4605. Duties. The governor shall be responsible for the administration of the highway traffic safety program. The governor, in addition to other duties and responsibilities conferred upon him by the constitution and laws of this state, is hereby empowered to contract and to do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966, and in so doing, to co-operate with federal and state agencies, private and public organizations, and with individuals, to effectuate the purposes of that enactment, and any and all subsequent amendments thereto. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of such programs, certification of teachers, and the acceptance, allocation and expenditure of funds for driver education in accordance with applicable federal laws and regula-

tions. Nothing in this act shall interfere with the provisions of chapter 51 or chapter 53 of Title 75, Revised Codes of Montana, 1947.

It shall be the duty of the board to advise and assist the governor in all matters of highway safety, and to establish comprehensive training programs, including, but not limited to, establishment and regulation of driver training schools and certification of said schools and instructors; establishment of adult training and retraining programs; to develop and procure practice driving facilities, simulators and other teaching aids for school and driver training use; to establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention; to establish a uniform system of driver licensing, including, but not limited to, mental and physical standards, and to prescribe and establish safety regulations for motor vehicles and operators.

History: En. Sec. 5, Ch. 177, L. 1967.

Compiler's Notes

The Federal Highway Safety Act of 1966, referred to in this section, is compiled as sections 401 to 404 of Title 23, United States Code.

Chapters 51 and 53 of Title 75, referred to at the end of the first paragraph of this section, were repealed by Sec. 496, Ch. 5, Laws of 1971. For similar provisions in current law, see section 75-7303 and Chapter 79, Title 75.

32-4606. Funds. The governor and the highway traffic safety board is hereby authorized to enter into contracts with the federal government to secure maximum federal appropriation. At least forty per cent (40%) of all federal funds received by the state shall be expended by the political subdivisions of said state in carrying out local approved highway traffic safety programs. Except as provided in this act, the governor is authorized to accept all gifts, money and funds to implement the purposes of this act; the expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of such expenditures for the last two (2) full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions.

History: En. Sec. 6, Ch. 177, L. 1967.

32-4607. Local programs. Except as provided in this act, all highway traffic safety programs of political subdivisions must be approved by the governor and no funds shall be expended unless such approval is obtained. All local and state officials are hereby instructed and directed to co-operate with the governor and highway traffic safety board to accomplish the purposes of this act. The governor is hereby empowered to administer the highway traffic safety programs of this state and those of its political subdivisions, all in accordance with this act and federal rules and regulations in the implementation thereof.

History: En. Sec. 7, Ch. 177, L. 1967.

Separability Clause

Section 8 of Ch. 177, Laws 1967 read "The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitu-

tional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 9 of Ch. 177, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 47—ZONING AND ADVERTISING REGULATION ALONG HIGHWAYS

- Section 32-4701. Declaration of policy.
 32-4702. Definitions.
 32-4703. Limitations on outdoor advertising.
 32-4704. Areas hereby zoned commercial.
 32-4705. Unzoned areas.
 32-4706. Regulations—customary usages.
 32-4707. Permits.
 32-4708. Removal of nonconforming signs.
 32-4709. Compensation for removal of signs.
 32-4710. Unlawful advertising.
 32-4711. Enforcement.
 32-4712. Agreements with the United States.
 32-4713. Guarantee against loss of funds.
 32-4714. Congressional action or nonaction.

32-4701. Declaration of policy. The legislature recognizing the public investment in highways and in justification of these expenditures, particularly the cost of maintenance which is borne wholly by state funds, finds and declares that it is necessary to promulgate a public policy of state zoning with uniform application adjacent to the interstate and primary systems within this state to promote their maximum utilization by encouraging the development of roadside businesses to serve the needs and pleasures of the traveling public, as well as to stimulate tourism, commerce, and for purposes of planning the general growth of the state's economy. Further, desiring to insure reasonable compliance with the Highway Beautification Act of 1965, it is the intention of the legislature in this act to provide a statutory basis for the regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems as declared herein and by congress in title 23, United States Code, "Highways."

History: En. Sec. 1, Ch. 287, L. 1967.

Compiler's Notes

The Highway Beautification Act of 1965, referred to in the second sentence of this section, is compiled as sections 131, 136, and 319 of Title 23, United States Code.

Title of Act

An act to provide for the zoning by the legislature of certain lands adjacent to the interstate and primary system highways as commercial and for zoning and rezoning in certain cases by the boards

of county commissioners, or through their authority in accordance with presently existing or hereafter enacted statutes; to provide that the zoning hereby effected shall not, in itself, affect any taxes levied against real property or any assessment or assessment classification; to provide for the control of outdoor advertising adjacent to the interstate and primary systems; to provide for the administration of such outdoor advertising controls; all in conformity with the Federal Highway Beautification Act of 1965; and containing a severability clause.

32-4702. Definitions. As used in this act:

(a) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated, by the state highway commission, and approved by the secretary of commerce or secretary of transportation, pursuant to the provisions of title 23, United States Code.

(b) "Primary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the state highway commission, and approved by the secretary of com-

merce or secretary of transportation, pursuant to the provisions of title 23, United States Code.

(c) "Sign" or "outdoor advertising" means an outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended or used to advertise or inform, any part of the advertising or informational contents of which is visible from any place on the main-traveled way of the interstate or primary systems.

(d) "Erect" means to place, construct, create, or bring into being a sign, display or device, but does not include changing copy upon, or the repair or replacement of, an existing legal sign, display or device.

(e) "Maintain" means to allow to exist.

(f) "Unzoned commercial or industrial area" means an area as defined and determined under section 5 [32-4705].

(g) "Municipality" means an incorporated city, town or village, but does not include counties, townships, or other rural areas.

History: En. Sec. 2, Ch. 287, L. 1967.

32-4703. Limitations on outdoor advertising. Subject to the provisions for the removal of nonconforming signs and the payment of just compensation therefor, contained in sections 8 and 9 [32-4708 and 32-4709] herein, no sign shall, after January 1, 1968, be erected or maintained within six hundred sixty (660) feet of the nearest edge of the right of way and visible from the main-traveled way of any highway which is a part of the interstate or primary system in this state, except the following:

(a) Official signs, including informational or directional signs regarding telephone service, emergency telephone signs, buried or underground cable markers, above ground cable closures, and directional signs and notices, which shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, as authorized or required by law, subject to national standards to be promulgated by the secretary of commerce or the secretary of transportation.

(b) Signs advertising the sale or lease of property upon which they are located.

(c) Signs advertising activities conducted, services rendered, goods sold, stored, produced or mined, or the name of the enterprise on the property upon which they are located.

(d) Signs in areas which are now or hereafter zoned industrial, commercial, or the like, under section 4 [32-4704] or otherwise, subject to the regulations set forth in section 6 [32-4706] concerning size, lighting and spacing.

(e) Signs in unzoned commercial or industrial areas, which now or hereafter qualify as such, as defined in, and determined under section 5 [32-4705], subject to the regulations set forth in section 6 [32-4706] concerning size, lighting and spacing.

History: En. Sec. 3, Ch. 287, L. 1967.

32-4704. Areas hereby zoned commercial. (a) The legislature, to the extent hereinafter provided, and to effectuate the declared purposes of this act, hereby zones all of the following described lands located outside of

municipalities and lying within six hundred sixty (660) feet of the nearest edge of the right of way of any highway which is part of the interstate and primary system, as commercial, effective as of the effective date of this act:

(1) For a distance of ten (10) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities of the first class as defined in section 11-201, R.C.M. 1947;

(2) For a distance of five (5) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities of the second class as defined in section 11-201, R.C.M. 1947;

(3) For a distance of five (5) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities of the third class as defined in section 11-201, R.C.M. 1947;

(4) For a distance of three (3) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities classified as towns in section 11-201, R.C.M. 1947;

(5) For a distance of three (3) miles directly along, and without deviation from, the routes thereof outside of and beyond the limits of unincorporated cities or towns.

(6) For a distance of five (5) miles outside of and beyond the intersection of said highways, or of the intersections of said highways with state secondary system highways, directly along, without deviation from, the routes of all such highways from the point of intersection; and

(7) For a distance of five (5) miles directly along and without deviation from, any interstate highway in both directions from any interchange located thereon.

The zoning, which is effected hereby, is subject to the exceptions specified in subsection (b) and to zoning by the several boards of county commissioners, or under their authority, as provided in subsection (e).

(b) Lands not so zoned. No lands are hereby zoned commercial, as aforesaid, which are:

(1) Within five hundred (500) feet of any building used primarily as a residence, unless the owner of the building consents in writing to the particular commercial use or uses to be made of such lands;

(2) In, or within five hundred (500) feet of, any official park, garden, or forest preserve, publicly owned, controlled, and maintained, or within five hundred (500) feet of a church or school;

(3) In, or within five hundred (500) feet of, any officially designated historical battlefield, or within five hundred (500) feet of any museum, publicly owned, controlled and maintained;

(4) In, or within five hundred (500) feet of, any official picnic grounds or swimming beach, publicly owned, controlled, and maintained, or any golf course, publicly or privately owned or maintained;

(5) In, or within five hundred (500) feet of, any safety rest or recreation area, publicly owned, controlled, and maintained pursuant to section 319 of title 23 of the United States Code;

(6) Within five hundred (500) feet of any sanitary or other facility for

the accommodation of the motorist, publicly owned, controlled, and maintained pursuant to section 319 of title 23 of the United States Code;

(7) In, or within five hundred (500) feet of, any strip of land, an interest in which has been acquired by this state for the restoration, preservation, or enhancement of scenic beauty, and which is publicly controlled and maintained, pursuant to section 319 of title 23 of the United States Code;

(8) Specifically zoned noncommercial or nonindustrial under the authority of presently existing zoning statutes or zoning statutes hereafter enacted in this state.

The foregoing provisions of this subsection shall be so interpreted as to protect the uses, activities and features above specified, whether now in existence or hereafter established. In addition, any area zoned commercial, as hereinbefore provided, which is otherwise inappropriate for the commercial uses specified in subsection (c) shall be promptly rezoned in such a manner as to prohibit such uses therein, as provided in subsection (e), but subject to the protection of agricultural activities and private residential uses as therein specified.

(c) Permitted uses. The following uses and activities, subject to the regulations specified in subsection (d) concerning reasonable zoning regulations by the several boards of county commissioners, shall be permitted in areas zoned as commercial under this section.

(1) Agricultural, grazing, ranching, horticulture uses and activities, and the growing of timber, and all other uses and activities reasonably or customarily related thereto, or generally permitted in areas zoned for agriculture, grazing, ranching, or the like (herein collectively referred to as "agricultural activities");

(2) Buildings used for private residences;

(3) Motels and hotels;

(4) Restaurants and similar establishments serving prepared foods on-premise;

(5) Grocery stores;

(6) Gasoline stations;

(7) Sporting goods stores;

(8) Golf clubs and courses;

(9) Agricultural produce stands;

(10) Resorts, and recreational facilities reasonably related to the topography and nature of the land;

(11) Outdoor advertising, whether on-premise or off-premise and regardless of its content; and

(12) Such other uses and activities as the several boards of county commissioners may in their discretion deem suitable therein.

(d) Zoning and building regulations. Outdoor advertising shall be subject to the regulations specified in section 6 [32-4706] concerning size, spacing and lighting and to none other. All other uses and activities specified in subsection (c), except the agricultural activities and private residential uses aforesaid, shall be subject to such reasonable regulations

as may be enacted by the several boards of county commissioners, or under their authority, in the manner provided by presently existing or hereafter enacted planning and zoning statutes.

(e) Rezoning by counties. The several boards of county commissioners, or those acting under their authority, in accordance with presently existing or hereafter enacted planning or zoning statutes, are hereby authorized to rezone any commercial zone or part thereof, hereby created, in accordance with applicable zoning principles, in either a more or less restrictive manner; provided, that no restrictive rezoning shall prohibit the agricultural activities and private residential uses aforesaid. In so acting, such boards, or those acting under their authority, shall utilize their presently existing or hereafter authorized planning and zoning procedures. Nothing in this section shall affect any authority of any political subdivision to zone lands not zoned or rezoned by the legislature hereunder.

(f) Zoning principles. The zoning principles which are relevant to land-use planning and zoning outside of municipalities and which govern in this state are as follows:

(1) Lands, whether vacant or used or not, shall be so zoned as to permit the uses thereof which are appropriate thereto, and to prohibit the uses thereof which are inappropriate thereto.

(2) The present and future needs of the economy of the state for a particular kind of activity and the convenience which it would afford to the citizenry can in themselves render some lands appropriate therefor which might otherwise be inappropriate therefor.

(3) Zoning shall not, contrary to the desires of the affected parties, be unreasonably discriminatory as between the owners of substantially similar parcels of land to similar uses.

(4) Agricultural, horticultural, grazing, and ranching uses and purposes, and the growing of timber, shall always be deemed appropriate upon the lands herein zoned and all other activities specified in subsection (c) shall also be deemed appropriate for the lands herein zoned and lands having a population of low density except where such lands are of uncommon natural beauty, and except as provided in subsection (b).

In zoning as aforesaid, the legislature has complied with and duly considered its said zoning principles in light of the developing economy, the desirability of lessening commercial congestion within municipalities, the desirable trend towards decentralization of commercial activities, the increasing needs of the motoring public, the economic necessity confronting businesses both inside and outside of municipalities of advertising to the motoring public, and the public interest in protecting areas of uncommon natural beauty.

(g) Effect on taxation. The zoning and rezoning effected and authorized by this section shall not in itself affect any taxes levied against real property or any assessment or assessment classification, but actual increases in value of any parcel of land by reason of the construction or erection of a building or structure thereon shall be taken into account in thereafter assessing the value thereof and in levying any ad valorem tax thereon.

(h) Future existing uses. The commercial zoning affected by this section shall be without prejudice to the right of the legislature hereafter to rezone and further rezone. The legislature further declares its intent to periodically review and, when deemed necessary, to modify or otherwise alter the zoning established by this section based on considerations of economic, physical, social, governmental and other conditions relating to the development of the state. Any sign, display or device used for outdoor advertising in any such commercial zone, which shall become illegal by reason of zoning by a board of county commissioners under subsection (e), or rezoning by the legislature, as herein provided, shall be required to be removed or brought into compliance as provided in section 8 [32-4708].

History: En. Sec. 4, Ch. 287, L. 1967.

32-4705. Unzoned areas. Unzoned commercial and industrial areas are defined for the purposes of this act as follows:

(a) Definition. An "unzoned commercial or industrial area," consistent with and subject to the principles and standards set forth in subsection (f) of section 4 [32-4704], means any of the following unzoned areas adjacent to an interstate or primary highway:

(1) Those areas not zoned by state or local law, regulation or ordinance which are occupied by one (1) or more industrial or commercial activities other than outdoor advertising signs on the lands along the highway for a distance of six hundred (600) feet immediately adjacent to the activities, and those lands directly opposite on the other side of the highway to the extent of the same dimensions; provided, those lands on the opposite side of the highway are not deemed scenic or having aesthetic value.

History: En. Sec. 5, Ch. 287, L. 1967;
amd. Sec. 1, Ch. 220, L. 1971.

Amendments

The 1971 amendment completely re-wrote subdivision (a)(1); and deleted subdivisions (2) to (5), inclusive, and subdivision (b).

32-4706. Regulations—customary usages. Subject to the provisions for the removal of nonconforming signs and the payment of just compensation therefor, contained in sections 8 and 9 [32-4708 and 32-4709] herein, and after January 1, 1968, signs subject to this act, but permitted under subsections (d) and (e) of section 3 [32-4703], shall comply with the regulations of this section governing the size, lighting and spacing thereof, which regulations are consistent with customary usages of this state.

(a) Regulations as to size. (1) The maximum area of a sign face shall be six hundred fifty (650) square feet, including border and trim, but not supports.

(2) In the case of double-faced, back-to-back and v-type signs, said size limitation shall be six hundred fifty (650) square feet, applicable to each separate face.

(b) Regulations as to lighting. (1) No revolving or rotating beam of light simulating an official emergency device shall be permitted. Signs

with flashing red, green or amber incandescent lights shall not be permitted, except in illuminated signs giving such public service information as time, date, temperature or direction.

(2) External lighting, such as floodlights, slimline and gooseneck reflectors, shall be permitted, provided that it is shielded so as to prevent the direction of rays of light to any part of the main-traveled way.

(3) No lighting shall interfere with the effectiveness of any official traffic control device or official warning sign.

(c) Regulations as to spacing. (1) Within municipalities, signs shall be erected and maintained in conformity with any applicable building codes and ordinances relating to spacing.

(2) Outside of municipalities, no sign shall be erected adjacent to a limited access highway within five hundred (500) feet, nor adjacent to a nonlimited access highway within five hundred (500) feet, of an existing off-premise sign unless separated therefrom by a building, structure, highway or roadway.

(3) Neither inside nor outside of municipalities shall any sign be erected or maintained in such a location as to prevent the driver of a vehicle from having an effective view of any official traffic control device applicable to him or of approaching, merging or intersecting traffic within five hundred (500) feet of such sign.

(4) For the purposes of the spacing regulations aforesaid, double-faced, back-to-back, and v-type signs shall be considered as a single sign.

(d) Legislative finding. The legislature has conducted hearings and received evidence as to customary usage in outdoor advertising in this state, and, based thereon, and upon its own knowledge thereof, does hereby find and determine that the regulations in this paragraph set forth as to size, lighting and spacing are consistent with customary usage in this state.

History: En. Sec. 6, Ch. 287, L. 1967.

32-4707. Permits. After January 1, 1968, no private off-premise sign shall be maintained without a permit. Applications for permit shall be made to the state highway commission or, within municipalities, to the municipal authority designated by its legislative body on forms furnished by said commission, and calling for reasonable information, including a statement that the owner or occupant of the land in question has consented to the erection or maintenance of the sign thereon, and shall be accompanied by a fee in accordance with the following schedule:

(a) Fifty cents (\$.50) if the advertising area does not exceed fifty (50) square feet;

(b) One dollar (\$1) if such area exceeds fifty (50) but does not exceed three hundred (300) square feet;

(c) Two dollars (\$2) if such area exceeds three hundred (300) square feet.

Permits shall be for the calendar year, shall be assigned a permanent number, and shall be renewed annually upon payment of said fee for the new year without the filing of a new application. Fees shall not be pro-

rated for fractions of the year. Two (2) permits shall be required for a double-faced, back-to-back, or v-type sign. Advertising copy may be changed at any time without the payment of an additional fee.

The commission or municipal authority shall issue a permit for the sign covered by application duly made as aforesaid, unless it is in violation of this act and, upon the initial issuance of a permit, shall also issue a permanent identification tag not larger than six (6) square inches, carrying the permit number, which tag the permittee shall affix to the sign. Notwithstanding the foregoing, and despite any such violation, a permit and identification tag shall be issued for any sign in existence on the effective date of this act and the permit shall thereafter be renewed for the periods of time prescribed in section 8 [32-4708].

A permit may be revoked after hearing upon thirty (30) days' notice if the state highway commission finds that any statement made in the application therefor was false or misleading or that the sign covered thereby is not in good general condition and in a reasonable state of repair, or is otherwise in violation of this act, provided that such false or misleading information has not been corrected and that the sign has not been brought into compliance with this act within thirty (30) days after written notification thereof.

History: En. Sec. 7, Ch. 287, L. 1967.

32-4708. Removal of nonconforming signs. Any sign lawfully in existence along the interstate system or the primary system on October 22, 1965, and which is not now in conformity with the provisions contained herein shall not be required to be removed until July 1, 1970. Any other sign lawfully erected which does not on January 1, 1968, or at any time thereafter, conform to this act, shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

History: En. Sec. 8, Ch. 287, L. 1967.

32-4709. Compensation for removal of signs. The state highway commission is directed to acquire by purchase, gift, or condemnation and shall pay just compensation when and in so far as signs are required to be removed by this act, as follows:

(a) Any such removal, by whomever effected, shall be deemed a taking and appropriation by this state of the following:

(1) From the owner of such sign: all right, title, and interest in such sign, and in his leasehold, license or other interest, including purely contractual interests, in or related to the land; and

(2) From the owner of the real property on which the sign is located: the right to erect and maintain the sign thereon, whether or not a contractual arrangement for the erection and maintenance of such sign exists.

(b) In cases of purchase, compensation shall be paid in the amount and at the time mutually agreed upon. In cases of condemnation, compensation shall be paid in the amount computed as aforesaid, and the person or persons entitled thereto shall have the same rights in respect to the time of payment, procedures, and resort to the courts of this state as

those of a record owner whose fee in lands has been condemned and taken for highway right of way.

(c) In addition, the state highway commission may voluntarily purchase from any sign owner or landowner the rights, titles, interests and elements of value aforesaid prior to the time when the sign's removal is required by this act, or whether or not its removal is required by this act, upon such terms as to price, removal, date of removal, and otherwise, as are mutually agreeable to it and to the owners of the sign and land.

(d) Notwithstanding anything to the contrary contained herein no compensation shall be paid with respect to any sign erected after the passage and approval of this act, which on January 1, 1968, shall not be in conformity with the provisions contained herein.

History: En. Sec. 9, Ch. 287, L. 1967.

32-4710. Unlawful advertising. Any advertising sign which violates the provisions of this act is hereby declared to be illegal. Subject to sections 8 and 9 [32-4708 and 32-4709], the state highway commission shall give thirty (30) days' notice, by certified mail, to the owner thereof to remove same if it is a prohibited sign or cause it to conform to regulations if it is an authorized sign. If the owner fails to act within thirty (30) days as required in the notice, the state highway commission shall proceed to cause the removal of the sign under section 11 [32-4711] at the owner's expense.

History: En. Sec. 10, Ch. 287, L. 1967.

32-4711. Enforcement. The state highway commission shall enforce the provisions of this act through the remedy of injunction or other appropriate legal proceedings, and shall not act except through such proceedings. Neither the state highway commission nor any other agency nor political subdivision of this state shall, by plantings or otherwise, obstruct the view, or in any other way interfere with the effectiveness of any sign legally in place under the provisions of this act.

History: En. Sec. 11, Ch. 287, L. 1967.

32-4712. Agreements with the United States. The state highway commission is hereby authorized and directed in behalf of this state to seek agreements with the secretary of commerce or the secretary of transportation as to the matters specified for agreement in subsection (d) of section 131 of title 23, United States Code. Said commission's authority so to act is hereby limited, consistent with constitutional principles, to seeking and if possible making agreements embodying the provisions and only the provisions of sections 5 and 6 [32-4705 and 32-4706], on the basis that they are in conformity with said section 131.

If such agreement or agreements cannot be achieved, the attorney general of this state shall promptly initiate proceedings under the provisions of said section 131 with respect to hearings, stay-of-penalties, and judicial review in order to resolve the disagreement by judicial determination. He shall also initiate such proceedings in the event of a determination to withhold any funds from this state for any alleged failure of this state to com-

ply with any provision of said section 131, in order to obtain a judicial determination of whether this act provides effective control of outdoor advertising in conformity with said section 131.

Furthermore, prior to the occurrence of the contingencies above-mentioned in this section, the attorney general of Montana is directed, by declaratory judgment action or otherwise, to seek a court determination as speedily as possible as to whether this act is in compliance with the Federal Highway Beautification Act of 1965.

History: En. Sec. 12, Ch. 287, L. 1967;
amd. Sec. 2, Ch. 220, L. 1971.

Amendments

The 1971 amendment added the third paragraph.

32-4713. Guarantee against loss of funds. It is the overriding intent of this act, while asserting the rightful independence of this state in regard to the regulation of land usage within its borders, to ensure in all events against the withholding of any federal-aid highway funds from this state under the Federal Highway Beautification Act of 1965. Accordingly, in the event that a United States district court for this state or, in case of further appeal or review, the United States court of appeals or supreme court should hold any part of this act, or any action taken hereunder, to be in noncompliance with said federal act, the state highway commission shall, when advised by the attorney general of Montana that further court proceedings are not warranted, promulgate such regulations as are minimally necessary to avoid the loss of any such funds, which regulations shall govern to the extent of any inconsistency between them and this act and shall be retroactively effective from January 1, 1968, if necessary to achieve the objective of this section, and until modified or superseded by further action by the legislature. Such regulations may suspend or supersede any provision of this act or any action taken hereunder, including any zoning action, but only to the extent necessary to achieve the objective of this section. In so acting the state highway commission shall be guided by and conform to the judgment and instructions of the highest court to rule on this act's compliance or not, and, in the case of the two (2) matters specified for agreement with the secretary of commerce or transportation in subsection (d) of section 131 of said title 23, by the position of such secretary to the extent that it may not have been set aside, modified or disapproved by such court.

History: En. Sec. 13, Ch. 287, L. 1967;
amd. Sec. 3, Ch. 220, L. 1971.

Amendments

The 1971 amendment substituted "when advised by the attorney general of Montana that further court proceedings are not warranted" in the second sentence for "when all possibilities of review have been exhausted."

Compiler's Note

The Highway Beautification Act of 1965, referred to in the first sentence of this section, is compiled as sections 131, 136, and 319 of Title 23, United States Code.

32-4714. Congressional action or nonaction. No sign shall be removed until federal funds are available as provided in section 131 (n), title 23, United States Code. In any event, if at any time in the future Congress should amend section 131 of title 23, United States Code, or whatever law might then provide for federally required control of signs by the

several states, in such manner as to no longer require control of signs in areas adjacent to the primary system, or any part or parts thereof, this act shall automatically be deemed amended as of the effective date of such congressional action in such manner that it will thenceforth in no way whatsoever control, restrict, regulate, or in any way affect the erection or maintenance of signs in areas adjacent to the primary system, or to such part or parts thereof; provided, however, that nothing herein shall diminish the rights of any sign owner to compensation under section 9 [32-4709], for signs which may theretofore have been removed from areas adjacent to the primary system.

History: En. Sec. 14, Ch. 287, L. 1967; amd. Sec. 1, Ch. 211, L. 1969; amd. Sec. 4, Ch. 220, L. 1971.

Compiler's Note

The Highway Beautification Act referred to in the first sentence of this section, is compiled as sections 131, 136, and 319 of Title 23, United States Code.

Amendments

The 1969 amendment extended applicability of the act from January 1, 1970 to January 1, 1972.

The 1971 amendment substituted the first sentence for a sentence reading "In the event that the Congress should fail prior to January 1, 1972, to make an appropriation for compensation purposes in such an amount that this state's share thereof will be sufficient to pay seventy-five per cent (75%) of the compensation provided for in section 9, to the extent payable under the Highway Beautification Act of 1965, and as estimated by the state highway commission, this act shall on January 1, 1972, become automatically

null and void"; and made a minor change in punctuation.

Separability Clause

Section 16 of Ch. 287, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of the act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 15 of Ch. 287, Laws 1967 read "All statutes and regulations promulgated governing outdoor advertising adjacent to the federal interstate and primary highway systems are hereby repealed."

Effective Date

Section 5 of Ch. 220, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 4, 1971.

CHAPTER 48—EXCAVATIONS IN PUBLIC STREETS

- Section 32-4801. Definitions.
- 32-4802. Information to be sought before excavation made.
- 32-4803. Procedure—filing with county clerk and recorder.
- 32-4804. Liability for damage from failure to obtain information.
- 32-4805. Liability for negligence notwithstanding information obtained.
- 32-4806. Immunity from liability if information is not given within specified time.
- 32-4807. Exemption for emergency repairs.
- 32-4808. Information to be part of architects and engineers' plan.

32-4801. Definitions. The following definitions shall apply to this act:

(a) "Person" shall mean and include an individual, partnership, joint venture or corporation, and includes the employer of an individual.

(b) "Underground facility" shall mean any item of personal property which shall be buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas, or other substances,

and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the aforesaid.

(c) "Excavation" shall mean and include any ditch, trench, cut, hole or change in grade.

History: En. Sec. 1, Ch. 180, L. 1971.

Title of Act

An act requiring persons excavating in any public street, alley, right of way

dedicated to public use or utility easement to obtain information as to existence therein of underground facilities, and providing civil penalties for failure so to do.

32-4802. Information to be sought before excavation made. No person shall make or begin any excavation in any public street, alley, right of way dedicated to the public use or utility easement without first obtaining information concerning the possible location of any underground facility from each and every public utility, municipal corporation or other person having the right to bury such underground facilities within the public street, alley, right of way or utility easement.

History: En. Sec. 2, Ch. 180, L. 1971.

32-4803. Procedure—filing with county clerk and recorder. Any person seeking information concerning the location of any underground facility must do so by request in writing. The person from whom such information is sought must acknowledge in writing receipt of such request and must provide such information in writing no later than the end of the normal business hours of the second full business day following the date of receipt the request, Saturdays, Sundays and holidays excluded.

Every public utility, municipal corporation, or other person having the right to bury underground facilities, shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained.

History: En. Sec. 3, Ch. 180, L. 1971.

32-4804. Liability for damage from failure to obtain information. If any underground facility is damaged by any person who has failed to obtain information as to its location as provided in section 3 [32-4803], then such person shall be liable to the owner of the underground facility for the entire cost of the repair of such facility.

History: En. Sec. 4, Ch. 180, L. 1971.

32-4805. Liability for negligence notwithstanding information obtained. The act of obtaining information as required by this act shall not excuse any person making any excavation from doing so in a careful and prudent manner nor shall it excuse such person from liability for any damage or injury resulting from his negligence.

History: En. Sec. 5, Ch. 180, L. 1971.

32-4806. Immunity from liability if information is not given within specified time. If information requested pursuant to section 3 [32-4803]

of this act is not provided within the time specified therein, any person damaging or injuring underground facilities shall not be liable for such damage or injury, unless caused by his negligence.

History: En. Sec. 6, Ch. 180, L. 1971.

32-4807. Exemption for emergency repairs. The provisions of this act shall not apply to any person making repairs to an underground facility or repairs to the streets or alleys themselves in a situation of emergency when such repairs must be made within a shorter period of time than that provided for in section 3 [32-4803] of this act, provided, however, that this exemption from obtaining information shall not excuse the person making the repairs from any liability for damages caused by his negligence.

History: En. Sec. 7, Ch. 180, L. 1971.

32-4808. Information to be part of architects and engineers' plan. Architects and engineers designing or requiring excavating in or adjacent to any public street, alley or right of way dedicated to public use or utility easement shall obtain information as to underground facilities and then make said information a part of the plan by which the contractors operate. Nothing in this section shall excuse any person from the obligation imposed by section 2 [32-4802] of this act.

History: En. Sec. 8, Ch. 180, L. 1971.

Separability Clause

Section 9 of Ch. 180, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid,

all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

TITLE 33—HOMESTEADS

Chapter 1. Homesteads, 33-124.

CHAPTER 1—HOMESTEADS

Section 33-124. Homesteads—quantity and value of land.

33-124. (6968) Homesteads—quantity and value of land. Homesteads may be selected and claimed:

1 and 2. * * * [Same as parent volume.]

3. Such homestead, in either case, shall not exceed in value the sum of seven thousand five hundred dollars (\$7,500.00), provided, however, that in any proceedings instituted to determine the value of such homestead, the assessed value of such land, with included appurtenances, if any, and of such dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

History: En. Sec. 1693, Civ. C. 1895; re-en. Sec. 4717, Rev. C. 1907; re-en. Sec. 6968, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1931; amd. Sec. 1, Ch. 166, L. 1937; amd. Sec. 1, Ch. 50, L. 1941; amd. Sec. 1, Ch. 266, L. 1965. Cal. Civ. C. Sec. 1260.

Amendment

The 1965 amendment increased the

maximum value of the homestead specified in paragraph 3 from \$2,500 to \$7,500.

Effective Date

Section 2 of Ch. 266, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

TITLE 34—HOTELS

Chapter 3. Licensing and regulation of transient lodging establishments, 34-301 to 34-310.

CHAPTER 2—SANITATION AND CONTROL BY STATE BOARD OF HEALTH

(Repealed—Section 12, Chapter 18, Laws of 1967, effective January 1, 1968)

34-201 to 34-217. (2485 to 2495, 2497 to 2502) **Repealed.**

Repeal

These sections (Secs. 1 to 4, Ch. 160, L. 1917; Secs. 1 to 13, Ch. 36, L. 1919; Sec. 1, Ch. 84, L. 1921), relating to sani-

tation of hotels and lodging houses, were repealed by Sec. 12, Ch. 18, Laws 1967, effective January 1, 1968. For present law, see 34-301 to 34-310.

CHAPTER 3—LICENSING AND REGULATION OF TRANSIENT LODGING ESTABLISHMENTS

- Section 34-301. Control and regulation of establishments required by public interest.
34-302. Definitions.
34-303. License required.
34-304. Fee—term of license.
34-305. Cancellation or denial of license—procedure.
34-306. Rules and regulations—co-operative agreements.
34-307. Inspections.
34-308. Authority of board to issue subpoenas.
34-309. Penalty.
34-310. License fee—supersedes other fees.

34-301. Control and regulation of establishments required by public interest. It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing transient lodging space and/or accommodations, as defined in section 2 [34-302] hereof, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate insanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing transient lodging space and/or accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.

History: En. Sec. 1, Ch. 18, L. 1967.

Title of Act

An act to regulate establishments providing transient lodging space and/or accommodations; defining terms; providing for licensure and license fee; and providing procedure for cancellation or denial of license; empowering state board of health of Montana to make and enforce all necessary regulations including sanitary standards for such establishments; providing for public hearing on rules

and regulations; and to establish co-operative agreements with other Montana agencies; providing for inspection and report of inspection; empowering state board of health of Montana to issue subpoenas; prescribing penalties; providing for fee required by this act to supersede other fees for same purpose; directing that unconstitutionality of a part of this act shall not affect or impair the remainder; and repealing sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212,

34-213, 34-214, 34-215, 34-216, 34-217, Re- or supplemented, and establishing ef-
vised Codes of Montana, 1947, as amended fective date.

34-302. Definitions. Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(a) "Person" includes any individual, partnership, corporation, association, county, municipality, co-operative group, or other entity engaged in the business of operating or owning or offering the services of a hotel, motel, or tourist home.

(b) "Board" as used in this act shall mean the state board of health of the state of Montana.

(c) "Executive officer" shall mean the executive officer of the state department of health.

(d) "Department" means the state department of health.

(e) "Hotel or motel" shall mean and include any building or structure kept, used, or maintained as or advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodging house or place where sleeping accommodations are furnished for a fee to transient guests with or without meals.

(f) "Tourist home" means any establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when such accommodations are offered for hire or rent for the use of the traveling public.

History: En. Sec. 2, Ch. 18, L. 1967.

34-303. License required. Each year, every person engaged in the business of conducting or operating a hotel, motel, or tourist home, as defined in section 2 [34-302], shall procure a license issued by the department. A separate license shall be required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed. Applications for such license shall be made in writing to the department on such forms and with such pertinent information as it may deem necessary. Such licenses shall be granted as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license as hereinafter set forth, and subject to the right of applicant for license to hearing and judicial review as hereinafter set forth.

History: En. Sec. 3, Ch. 18, L. 1967.

34-304. Fee—term of license. (a) There shall be paid to the department with each application for such license or for renewal of such license, an annual license fee of five dollars (\$5). Fees collected by the department of health shall be transmitted to the state treasurer and placed to the credit of the general fund.

(b) Each license shall expire on December 31 following its date of issue, unless canceled for cause. Renewal may be obtained annually by paying the required annual license fee. Such license shall not be transfer-

able nor be applicable to any premises other than that for which originally issued.

History: En. Sec. 4, Ch. 18, L. 1967.

34-305. Cancellation or denial of license—procedure. (a) The executive officer of the department may cancel any license if he finds, after proper investigation by a representative of the department, that the licensee has violated provisions of this act or any regulation effective under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the executive officer of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval thereof by said executive officer shall be a bar to prosecution for violation.

(b) No license shall be denied or canceled by the executive officer of the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled. In such case, licensee must make written request to the executive officer of the department for a hearing within ten (10) days after notice of the grounds or charges has been received.

(c) When a multiple type establishment is licensed by the department, the denial or cancellation of said license may affect the entire establishment or only a portion of same as determined by the executive officer (a multiple type establishment includes two or more of the following: hotel, motel, or tourist home).

(d) Upon cancellation of a license or the right to operate one or more of the multiple type establishments under the same license, the license certificate shall be returned to the executive officer for destruction or deletion of types of establishment as the executive officer may direct in his notice of cancellation.

(e) Any order made by the executive officer after hearing, as provided herein, denying or canceling any license may be reviewed by application for writ of review (certiorari) commenced in the district court of the county in which the licensed premises are located, within ten (10) days from the date of notice in writing of the executive officer's order of denial or canceling such license has been served upon him.

(f) Whenever the department shall furnish evidence to the county attorney of any county in this state, such county attorney shall prosecute any person, persons, firm, or corporation violating any provisions of this act, or any rules or regulations effective under this act.

History: En. Sec. 5, Ch. 18, L. 1967.

34-306. Rules and regulations—co-operative agreements. (a) The board is hereby empowered to prescribe and to enforce rules and regulations and to prescribe such procedures as are necessary to preserve the public health and safety. These rules and regulations shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and

controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision; provided further that no rule or regulation shall be effective until a public hearing has been held for review of said rules and regulations. Said public hearing is to be announced to all Montana licensed operators thirty (30) days in advance in writing and accompanied by copy of proposed rules and regulations.

(b) The department is hereby authorized to enter into co-operative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

History: En. Sec. 6, Ch. 18, L. 1967.

34-307. Inspections. (a) The department, through its employees, and through local, county and district health officers, sanitarians, or other authorized representatives, shall make all necessary investigations and inspections for enforcement of this act. Each local, county or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules and regulations of the board may direct, and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the board may direct.

(b) All persons authorized by this act or by regulations adopted under this act shall have free access at all reasonable hours to any of the establishments listed and defined in section 2 [34-302], for the purpose of making inspections.

History: En. Sec. 7, Ch. 18, L. 1967.

34-308. Authority of board to issue subpoenas. In any proceeding under this act, the board may administer oaths and issue subpoenas, summon witnesses and take testimony of any person within the state of Montana.

History: En. Sec. 8, Ch. 18, L. 1967.

34-309. Penalty. Any person violating any provision of this act or regulation made hereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for the first offense, and not less than seventy-five dollars (\$75) nor more than two hundred dollars (\$200) for the second offense; and for the third and subsequent offenses, by a fine of not less than two hundred dollars (\$200) and imprisonment in the county jail not to exceed ninety (90) days.

History: En. Sec. 9, Ch. 18, L. 1967.

34-310. License fee—supersedes other fees. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this act.

History: En. Sec. 10, Ch. 18, L. 1967.

Separability Clause

Section 11 of Ch. 18, Laws 1967 read

"If any clause, sentence, paragraph, section or part of this act, shall for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction,

such judgment or decree shall not affect, impair nor invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered."

Repealing Clause

Section 12 of Ch. 18, Laws 1967 read "All acts or parts of acts in conflict here-

with are hereby repealed and specifically sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212, 34-213, 34-214, 34-215, 34-216, 34-217, Revised Codes of Montana, 1947."

Effective Date

Section 13 of Ch. 18, Laws 1967 read "This act shall be effective January 1, 1968."

TITLE 35—HOUSING

Chapter 1. Housing authorities law, 35-115, 35-128, 35-129.

CHAPTER 1—HOUSING AUTHORITIES LAW

Section 35-115. Form and sale of bonds.

35-128. Notice, hearing and creation of authority for a county.

35-129. Commissioners and powers of authority for a county.

35-115. (5309.15) Form and sale of bonds. The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty (60) years from their respective dates, bear interest at such rate or rates, be in such denominations (which may be made interchangeable) be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public sale held after notice published once at least ten (10) days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of _____ or in the city of _____, provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this act shall be fully negotiable.

History: En. Sec. 15, Ch. 140, L. 1935; amd. Sec. 37, Ch. 234, L. 1971.

payable semiannually" after "bear interest at such rate or rates" near the middle of the first paragraph; deleted the proviso to the second sentence of the second paragraph; and made a minor change in style.

Amendments

The 1971 amendment deleted "not exceeding six per centum (6%) per annum

35-128. (5309.27A) Notice, hearing and creation of authority for a county. (1) to (5) * * * [Same as parent volume.]

(6) The area of operation of such authority shall include said county, but in no event shall it include any city unless a resolution shall have been adopted by the governing body of the city (and by any authority which shall have been theretofore established and authorized to exercise its powers in the city) declaring that there is need for the county authority to exercise its powers within that city; provided, however, that such resolution shall not be effective until it has been approved by a majority vote of the electors within the corporate limits of such city or town voting either at a special or general election. If, after the adoption of such resolution or resolutions, an authority is established for any city within the county, the county authority shall have no power to initiate any further housing projects within such city without the consent, by resolution, of the governing body thereof and of the authority established for such city.

If the board of county commissioners, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three (3) months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

(7) * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 153, L. 1941; amd. Sec. 1, Ch. 281, L. 1971.

Amendments

The 1971 amendment rewrote the first paragraph of subsection (6). For prior text, see parent volume.

35-129. (5309.27B) Commissioners and powers of authority for a county. The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor, and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities and the commissioners of such housing authorities; provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "county clerk," the

term "city" as used therein shall be construed as meaning "county" and the term "ordinance" shall be construed as meaning "resolution" unless a different meaning clearly appears from the context; and provided further, that the last paragraph of section 35-109 shall not be applicable to any action taken with respect to any housing project undertaken by a county housing authority outside the city limits.

History: En. Sec. 5, Ch. 153, L. 1941;
amd. Sec. 2, Ch. 281, L. 1971.

Effective Date

Section 3 of Ch. 281, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.

Amendments

The 1971 amendment inserted "and the term 'ordinance' shall be construed as meaning 'resolution'" in the first proviso; added the second proviso; and made a minor change in punctuation.

TITLE 36—HUSBAND AND WIFE

Chapter 2. Conciliation law, 36-201 to 36-205.

CHAPTER 1—HUSBAND AND WIFE—MUTUAL OBLIGATIONS, POWERS AND PROPERTY RIGHTS

36-101. (5782) Mutual obligations of husband and wife.

Cross-Reference

Cause of action for alienation of affections abolished, sec. 17-1201.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298,

299, distinguished in *Hall v. United States*, 266 FSupp 671.

Under section 48-101 and this section a woman by her marriage obtains a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

References

Clark v. Clark, 143 M 183, 387 P 2d 907.

36-110. (5791) Married women may prosecute actions.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 299, distinguished in *Hall v. United States*, 266 FSupp 671.

Removal of Common-law Disability

This section and section 36-128 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

36-128. (5809) May sue and be sued.

History Correction

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887, re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R. C. M. 1921.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower &*

Lubrecht Constr. Co., 214 F Supp 298, 299, distinguished in *Hall v. United States*, 266 FSupp 671.

Removal of Common-law Disability

This section and section 36-110 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

CHAPTER 2—CONCILIATION LAW

Section 36-201. Manner of citation.

36-202. Purposes—definitions—where applicable.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential.

36-204. Procedure.

36-205. Powers of the court.

36-201. Manner of citation. This act may be cited as the "Montana Conciliation Law."

History: En. Sec. 1, Ch. 238, L. 1963.

Title of Act

An act constituting the several district

courts, courts of conciliation for the purpose of protecting the rights of children and to promote and protect the family life and the institution of matrimony by

providing a means for reconciliation of spouses and the amicable settlement of domestic and family controversies, and specifically where minor children are involved; defining the jurisdiction of said courts and to establish such courts which requires a determination by the judge or judges of the district whether such conciliation court is necessary in said district; providing for the designation of a judge to handle conciliation cases, necessary personnel, and payment of the expenses of said courts of conciliation by the respective counties in which said court is functioning; the manner of holding conferences, privacy of hearings, proceedings and recommendations; no fees to be charged, the hearings to be informal, stay

of divorce proceedings for not to exceed thirty days to give the parties an opportunity for a reconciliation conference, transfer of cases to the conciliation court when it appears that the welfare of minors is going to be seriously affected and permitting the jurisdiction of the conciliation court where no minors are involved if it appears that a reconciliation may be had, granting the conciliation court the same powers as a district court under the Constitution of the state of Montana, Article 8, Section 1, section 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

36-202. Purposes—definitions—where applicable. (1) Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

(2) Definitions. As used in this chapter "shall" is mandatory and "may" is permissive.

(3) Applicability of the Law—Determination by District Court. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge, and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential. (1) Exercise of Jurisdiction. Each district court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court."

(2) Selection of Judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

(3) Transfer of Cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so

appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

(4) Budget. The provisions of the county budget system, section[s] 16-1901 to 1911, inclusive, R.C.M. 1947, shall, except as provided by section 4, subsection 9 [36-204 (9)] of this act, be applicable to expenditures for the court of conciliation; provided, however, that the court may submit to the board of county commissioners the information required by section 16-1901 on or before July 1st of each year.

(5) Manner of Conciliation. The judge of the conciliation court may hear all matters invoked under this act or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

The conciliation counselor shall:

(a) Hold conciliation conferences with parties to, and hearings in, proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the conciliation court.

(b) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

(6) Probation Officers Duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

(7) Privacy of Hearings. All district court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

(8) Jurisdiction. The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the Constitution of Montana, Article 8, Section 1, Chapter 3 [Title 93], Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963.

36-204. Procedure. (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(2) Prior to the filing of any action for divorce, annulment or separate maintenance, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

(3) The petition shall be captioned substantially as follows:

District Court of the State of Montana

For the County of _____

Upon the petition of _____ Petitioner	}	Petition for Conciliation (Under the Conciliation Court Law)
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And concerning _____ _____ Respondents.	}	and _____
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To the Conciliation Court:

(4) The petition shall:

(a) Allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(b) State the name and age of each minor child whose welfare may be affected by the controversy.

(c) State the name and address of the petitioner, or the names and addresses of the petitioners.

(d) If the petition is presented by one spouse only, name the other spouse as a respondent, and state the address of that spouse.

(e) Also name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner.

(f) State such other information as the court may by rule require.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition, when any person requests such assistance. All public officers

in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

(6) No Fees. No fee shall be charged by any officer for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to this chapter.

(7) Time and Place of Hearings. The court shall fix a reasonable time and place for hearing on the petition, and shall cause such notice of the filing of the petition and the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

(8) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district, and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(9) Hearings Informal. The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this act the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians or psychiatrists, or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

(10) Orders—Effective Time—Reconciliation Agreement. At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than thirty (30) days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until thirty (30) days after the hearing of the petition for conciliation, neither spouse shall file any action for divorce, annulment of marriage, or separate maintenance.

If, however, after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for divorce, annulment of marriage or separate maintenance. The pendency of a divorce, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(12) **Stay of Divorce Proceedings—Where Conciliation Petition Filed First.** Whenever any action for divorce, annulment of marriage, or separate maintenance is filed in the district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

(13) **Jurisdiction Where No Minors Involved.** Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for divorce, annulment, or separate maintenance, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

History: En. Sec. 4, Ch. 238, L. 1963.

36-205. Powers of the court. The conciliation court shall have the same powers as the district court under the Constitution of the state of Montana, Article 8, Section 1, section[s] 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

History: En. Sec. 5, Ch. 238, L. 1963.

TITLE 37—INITIATIVE AND REFERENDUM

Chapter 1. Initiative and referendum, 37-104.1.

CHAPTER 1—INITIATIVE AND REFERENDUM

Section 37-104.1. Attorney general's summary of referred or initiative measures—statement by secretary of state for referendum measures—placement on ballot.

37-101. (99) Form of petition for referendum.

Contents of Petition

Statute prescribing form required for referendum petition was satisfied by petition stating ordinance number, title and date of session of city council at which

ordinance was passed, even though full text of ordinance was not set forth in petition. *Tod v. City of Billings*, 149 M 462, 430 P 2d 620.

37-103. (101) County clerk to verify signatures.

Sufficiency of Certification

City clerk's certification of petition for referendum presented on city ordinance simply identifying petition and stating "it

has been determined that five per cent of the qualified electors have not signed" did not meet requirements of statute. *Tod v. City of Billings*, 149 M 462, 430 P 2d 620.

37-104.1. Attorney general's summary of referred or initiative measures—statement by secretary of state for referendum measures—placement on ballot. The secretary of state of the state of Montana prior to certifying and numbering of referendum, initiative or constitutional amendment to the several counties of Montana as provided by sections 37-105 and 23-1102 [23-3506] of the Revised Codes of Montana, 1947, shall transmit a copy of the measure to be voted upon to the attorney general of Montana. Within ten (10) days after the measure is filed with him, the attorney general shall provide and return to the secretary of state a statement in ordinary plain language explaining in not more than one hundred (100) words the general purpose of the measure submitted. In the case of referendum measures, the secretary of state shall prepare a statement setting forth the vote by which the referendum passed each house of the legislative assembly and that it was signed by the governor. The statement by the secretary of state shall precede the attorney general's statement on the printed form. The statement as prepared by the attorney general, and the statement of the secretary of state for referendum measures only, shall be in addition to the legislative title of the measure, the statement of the secretary of state for referendum measures only and the statement of the attorney general shall precede the other title of the measure. In providing the statement, the attorney general shall give a true and impartial statement of the purpose of the measure in plain, easily understood language and in such manner as shall not be an argument or likely to create prejudice either for or against the measure.

History: En. Sec. 1, Ch. 22, L. 1963; amd. Sec. 1, Ch. 21, L. 1969.

Compiler's Notes

Section 23-1102, referred to in the first part of this section, was repealed by Sec. 248, Ch. 368, Laws 1969. For new law, see sec. 23-3506.

Title of Act

An act to require a true, plain and impartial statement of the meaning and purpose of any referendum, initiative or constitutional amendment submitted to the

vote of the people of the state of Montana and repealing all acts and parts of acts in conflict therewith.

Amendments

The 1969 amendment inserted the provision relating to the statement by the secretary of state for referendum measures.

Repealing Clause

Section 2 of Ch. 22, Laws 1963 repealed all acts and parts of acts in conflict therewith.

37-105. (103) Certification and numbering of measures, etc.

Compiler's Notes

Section 23-1102, referred to in this section, was repealed by Sec. 248, Ch. 368,

Laws of 1969. For a similar provision in current law, see section 23-3506.

37-107. (105) Printing and distribution of measures.

Compiler's Notes

Sections 23-303 and 23-1105 referred to in the second paragraph, were repealed by Sec. 248, Ch. 368, Laws of 1969. For

similar provisions in current law, see section 23-2701 on qualifications of voter and section 23-3508 on printing of ballots.

37-108. (106) Canvass of votes.

Compiler's Notes

Sections 23-1812 and 23-1813, referred to in this section, were repealed by Sec.

248, Ch. 368, Laws of 1969. For present law, see section 23-4015.

TITLE 38—INSANE AND FEEBLE-MINDED

- Chapter 1. The Montana state hospital—management, 38-107 to 38-110, 38-119, 38-120.
2. Examination of persons mentally deranged—commitment, 38-207, 38-210.
 4. Examination and commitment of person as mentally deranged but not dangerous—voluntary application for admission, 38-406.1, 38-406.2.
 5. Convalescent leave of patients, 38-502, 38-504, 38-505.
 6. Eugenical sterilization law, Repealed—Section 1, Chapter 310, Laws of 1969.
 7. Alcoholism services center, Repealed—Section 15, Chapter 112, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
 8. Montana state training school and hospital, Repealed—Section 10, Chapter 213, Laws of 1963; Section 82, Chapter 266, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
 9. Leases of farm land for state hospital and state penitentiary authorized, Repealed—Section 82, Chapter 266, Laws of 1963.
 10. State department of mental hygiene, Repealed—Section 101, Chapter 199, Laws of 1965.

CHAPTER 1—THE MONTANA STATE HOSPITAL—MANAGEMENT

- Section 38-107. Department may send patient to friends.
- 38-108(1). May contract with some other institution.
 - 38-108(2). May contract with some other institution.
 - 38-109. Discharge of patients.
 - 38-110. Maintenance of indigent persons on discharge.
 - 38-119. Insane person not indigent must be paid for.
 - 38-120. Receipt of nonresident insane pending return to home state.

38-101, 38-102. (1413) Repealed.

Repeal

These sections (Secs. 2260, 2261, Pol. C. 1895; Sec. 1, Ch. 57, L. 1913; Sec. 1, Ch. 76, L. 1943; Sec. 19, Ch. 266, L. 1963),

relating to the name and management of the state hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-103. (1414) Repealed.

Repeal

This section (Sec. 2, Ch. 57, L. 1913), enumerating the powers and duties of

the board of the Montana state hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-104. (1415) Repealed.

Repeal

This section (Sec. 3, Ch. 57, L. 1913; Sec. 1, Ch. 42, L. 1923; Sec. 1, Ch. 149, L. 1929; Sec. 1, Ch. 268, L. 1947; Sec. 20, Ch.

266, L. 1963), relating to the superintendent of the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-105, 38-106. (1416, 1417) Repealed.

Repeal

These sections (Secs. 4, 5, Ch. 57, L. 1913), relating to the superintendent and

other staff members of the Montana state hospital, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-107. (1418) Department may send patient to friends. The department of public institutions may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state.

History: En. Sec. 2280, Pol. C. 1895; re-en. Sec. 1121, Rev. C. 1907; re-en. Sec. 1418, R. C. M. 1921; amd. Sec. 21, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The department of public institutions" at the beginning of the section for "The board."

38-108(1). (1419) May contract with some other institution. The department of public institutions may, when satisfied it will be for the

best interest of any insane person in the state, send him to some other institution, with its consent, outside the state.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 8, Ch. 213, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. The two amendments may be inconsistent, in that Ch. 266 contains language that was deleted by Ch. 213; therefore, the compiler has set out the language of both amendatory acts. The above is the

language of Ch. 213, Laws 1963; the language of Ch. 266 appears below as section 38-108(2).

Amendment

The 1963 amendment substituted "department of public institutions" for "board" at the beginning of the section; and deleted from the end of the section a clause reading, "and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent."

38-108(2). (1419) May contract with some other institution. The department of public institutions may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state, and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 22, Ch. 266, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. The two amendments may be inconsistent, in that Ch. 266 contains language that was deleted by Ch. 213; therefore, the com-

piler has set out the language of both amendatory acts. The above is the language of Ch. 266, Laws 1963; the language of Ch. 213 appears as section 38-108(1).

Amendment

Chapter 266, Laws 1963, substituted "The department of public institutions" at the beginning of the section for "The board."

38-109. (1421) Discharge of patients. The department of public institutions must cause to be discharged from the Montana state hospital any patient upon the written report of the hospital medical staff, that such patient is in satisfactory mental condition to be discharged. Such written report must be filed and kept in the office of the department, and every inmate on recovery must be ordered released, without requiring a sponsor.

History: En. Sec. 2283, Pol. C. 1895; re-en. Sec. 1124, Rev. C. 1907; re-en. Sec. 1421, R. C. M. 1921; amd. Sec. 1, Ch. 165, L. 1943; amd. Sec. 23, Ch. 266, L. 1963. Cal. Pol. C. Sec. 2189.

Amendment

The 1963 amendment substituted "The department of public institutions" at the beginning of the section and "the department" in the second sentence for "the board" in both places; and deleted "for the insane" following "Montana state hospital."

Opinion Required

The written opinion of the hospital medical board and not that of a ward doctor is essential for the release of a patient. Petition of Smith, 145 M 567, 403 P 2d 604.

References

Petition of Kolocotronis, 145 M 564 402 P 2d 977.

38-110. Maintenance of indigent persons on discharge. Upon the discharge of any patient of the Montana state hospital, the department shall notify the board of public welfare of the county from which such patient was committed, and the said county board of public welfare shall at once ascertain whether the discharged patient is in financial need, and if such

patient is found to be in financial need the county board of public welfare shall properly care for and maintain the discharged patient under the provision of the Public Welfare Act until such patient is able to care for himself or other provision has been made for such care.

History: En. Sec. 2, Ch. 165, L. 1943; amd. Sec. 24, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted "in addi-

tion to the financial aid required by section 1422" after "Montana state hospital"; and substituted "the department" for "the board" in the same place.

38-111. Repealed.

Repeal

This section (Sec. 3, Ch. 165, L. 1943; Sec. 1, Ch. 153, L. 1957), relating to the

medical examination of patients, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-118. (1429) Repealed.

Repeal

This section (Sec. 2291, Pol. C. 1895), relating to nonresident insane persons,

was repealed by Sec. 2, Ch. 198, Laws 1963 and by Sec. 10, Ch. 213, Laws 1963.

38-119. (1430) Insane person not indigent must be paid for. None but indigent persons must be received into the Montana state hospital unless their care and maintenance is paid or guaranteed by the parents, children, or guardians of such person.

History: En. Sec. 2292, Pol. C. 1895; re-en. Sec. 1133, Rev. C. 1907; re-en. Sec. 1430, R. C. M. 1921; amd. Sec. 25, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted a final

clause which read, "and all money received by the contractor for the care and maintenance of such persons must be accounted for in his settlement with the board."

38-120. Receipt of nonresident insane pending return to home state. An insane person, nonresident of this state, may be received into the Montana state hospital for a period not to exceed thirty (30) days pending return to the state of his residence.

History: En. Sec. 1, Ch. 198, L. 1963.

Title of Act

An act to permit reception of nonresident insane to state hospital pending return to state of residence and repealing section 38-118, Revised Codes of Montana, 1947.

Repealing Clause

Section 2 of Ch. 198, Laws 1963 read "Section 38-118, R.C.M. 1947, is hereby repealed."

**CHAPTER 2—EXAMINATION OF PERSONS MENTALLY DERANGED
—COMMITMENT**

Section 38-207. Forms of certificates.

38-210. Moneys of insane person—disposal of.

38-201. (1431) Examination before magistrate—affidavit, etc.

Fairness of Inquisition

Petitioner who was committed to state hospital was not deprived of his constitutional rights where it appeared that district judge and court attendants went to

hospital to advise him of hearing date and his privilege to have counsel, his mother was present at the hearing, which was held in the hospital, and everything was done by the court to see that petitioner's

rights were protected and no advantage was taken of him. Petition of Kolocotronis, 145 M 564, 402 P 2d 977.

References

State v. Green, 143 M 234, 388 P 2d 362.

38-206. (1436) Certificate of physicians.

Disagreement by Physicians

Where medical jurors disagreed as to necessity of commitment of petitioner in mental institution, order of commitment

issued by district court was void and of no effect. Application of Bushman, 153 M 422, 458 P 2d 81.

38-207. (1437) Forms of certificates. The certificate must be made in the form prescribed by, and if they can be had, upon blanks furnished by the state department of public institutions.

History: En. Sec. 2306, Pol. C. 1895; re-en. Sec. 1140, Rev. C. 1907; re-en. Sec. 1437, R. C. M. 1921; amd. Sec. 26, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "board of the commissioners for the insane."

38-210. (1440) Moneys of insane person—disposal of. When any person is adjudged to be insane and ordered committed to the Montana state hospital, or is adjudged to be in such a condition of mind that he should be placed in such hospital for observation, all moneys found on him at the time he is taken into custody must be certified to by the judge, and sent with such person to the hospital, to be delivered to the superintendent thereof, whose receipt therefor shall be taken by the officer or other person delivering him to the hospital, who must file such receipt with the clerk of the district court of the county in which the proceedings were had. If the amount exceeds one hundred dollars (\$100.00), the excess must be applied to the payment of the expenses of such person while in the hospital. If the amount is one hundred dollars (\$100.00) or less it must be kept and delivered to the person when discharged or released from the hospital or applied in payment of funeral expenses if such person dies while in such hospital. If any amount standing to the credit of any person paroled, discharged or released, or after payment of the funeral expenses of such person who dies while in such hospital, shall remain unclaimed for one (1) year after such parole, discharge, release or death, fifty per centum (50%) of such amount, but not in any event exceeding fifty dollars (\$50.00) shall be withdrawn from such account and placed in the agency fund in the state treasury, to be expended for indigent patients at such times and in such manner and for such purposes as may be prescribed by the superintendent of such hospital. Any balance remaining to the credit of any such person, shall be transmitted to the county treasurer of the county from which said person was sent, and if any sum remains after paying the costs of hearing, and transportation to the hospital, the balance shall be paid into the state treasury to the credit of the general fund.

History: Ap. p. Sec. 2309, Pol. C. 1895; amd. Sec. 6, p. 164, L. 1897; re-en. Sec. 1143, Rev. C. 1907; re-en. Sec. 1440, R. C. M. 1921; amd. Sec. 6, Ch. 117, L. 1939; amd. Sec. 2, Ch. 76, L. 1943; amd. Sec. 231, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the agency fund in the state treasury" for "the patients' deposit account, special account" in the fourth sentence.

38-214. (1444) Repealed.**Repeal**

This section (Sec. 8, p. 165, L. 1897; Sec. 9, Ch. 117, L. 1939; Sec. 3, Ch. 76, L. 1943; Sec. 1, Ch. 49, L. 1955; Sec. 1,

Ch. 131, L. 1959), relating to the expense of maintenance of inmates of the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 3—TRANSFER OF STATE HOSPITAL PATIENTS TO STATE TRAINING SCHOOL AT BOULDER

38-304. Repealed.**Repeal**

This section (Sec. 3, Ch. 10, L. 1943), relating to the expense of clothing per-

sons transferred to the state training school, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 4—EXAMINATION AND COMMITMENT OF PERSON AS MENTALLY DERANGED BUT NOT DANGEROUS—VOLUNTARY APPLICATION FOR ADMISSION

Section 38-406.1. Voluntary admission for diagnosis and treatment of mental illness—definitions.

38-406.2. Voluntary admission for at least sixty days authorized—application—earlier release—proceedings for judicial commitment—right to release—costs of commitment proceedings—transportation costs.

38-406. Repealed.**Repeal**

Section 38-406 (Sec. 6, Ch. 157, L. 1943; Sec. 1, Ch. 33, L. 1953), relating to the procedure for voluntary application for

admission to state hospital for treatment of mental condition, was repealed by Sec. 3, Ch. 102, Laws 1969.

38-406.1. Voluntary admission for diagnosis and treatment of mental illness—definitions. As used in this act unless the context indicates otherwise: (1) "Mental illness" means a psychiatric or other disease which substantially impairs mental health.

(2) "Patient" means a person admitted or committed to the Warm Springs state hospital for observation, diagnosis, care or treatment.

(3) "Prospective patient" means a person whose hospitalization is sought under the provisions of this act.

(4) "Hospital" means the Warm Springs state hospital.

(5) "Superintendent" means the superintendent of Warm Springs state hospital.

History: En. Sec. 1, Ch. 102, L. 1969.

Title of Act

An act to provide a procedure for voluntary admission to the Warm Springs state hospital which does not require approval of the district court judge; providing for a sixty-day compulsory period of detention authorizing earlier release or dis-

charge; and providing that proceedings for judicial commitment need not be commenced unless there is a request in writing for the patient's release after the sixty-day compulsory detention; repealing section 38-406, R. C. M. 1947, and repealing section 38-410, R. C. M. 1947, which has been superseded by Title 80, chapter 16, R. C. M. 1947.

38-406.2. Voluntary admission for at least sixty days authorized—application—earlier release—proceedings for judicial commitment—right to release—costs of commitment proceedings—transportation costs.

(1) Subject to the availability of suitable accommodations, the superintendent shall admit to the hospital a person who is mentally ill or who has symptoms of mental illness for whom voluntary application is made in accordance with subsection (2) of this section.

(2) An application for voluntary admission to the hospital shall:

(a) Be on forms prescribed by the hospital and furnished by the hospital to the county attorney;

(b) Be signed before two witnesses by the prospective patient, or in the case of a minor, by his parent or guardian;

(c) Be certified by a licensed physician who has personally examined the prospective patient and believes he is mentally ill or has symptoms of mental illness or is in need of psychiatric evaluation and treatment; and

(d) Contain a statement by the prospective patient, or his parent or guardian that, unless earlier released on convalescent status or discharged, the prospective patient will remain in the hospital for diagnosis and treatment for at least sixty (60) days.

(3) If in the opinion of the superintendent detention of the patient for the entire sixty (60) day period is unnecessary, the superintendent may release or discharge the patient.

(4) Proceedings for judicial commitment shall not be commenced with respect to a person admitted on voluntary application unless after the sixty (60) day period of compulsory detention the patient requests his release in writing or whose release is requested in writing by his parent, guardian, spouse, or next of kin. Upon receipt of such a request, the patient shall be released within five (5) days after the request is received unless the superintendent files a petition with the district court of the third judicial district in the county of Deer Lodge certifying that in his opinion the release of the patient would be unsafe for the patient or others, or that the patient is in need of care and treatment in the hospital and because of his illness lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization.

(5) The superintendent of the hospital shall inform patients of their right to release as provided in this section.

(6) The costs of commitment proceedings under this section shall be paid by the county of the patient's residence. When the proceedings are completed, the clerk of the district court for the county of Deer Lodge shall send all papers relating to the proceedings to the clerk of the district court of the county of the patient's residence.

(7) The costs of transportation to the hospital under this section shall be provided by the patient, his parents, guardian, or the welfare department of the county of the patient's residence.

History: En. Sec. 2, Ch. 102, L. 1969.

Repealing Clause

Section 3 of Ch. 102, Laws 1969 read
"Sections 38-406 and 38-410, R. C. M.
1947, are repealed."

38-407. Trial by jury, when.**Compiler's Notes**

Section 38-406, referred to in the first sentence, was repealed by Sec. 3, Ch.

102, Laws of 1969. For present law, see sections 38-406.1 and 38-406.2.

38-408. Duty of clerk of district court.**Compiler's Notes**

Section 38-406, referred to in this section, was repealed by Sec. 3, Ch. 102,

Laws of 1969. For present law, see sections 38-406.1 and 38-406.2.

38-409. Repealed.**Repeal**

This section (Sec. 9, Ch. 157, L. 1943), relating to investigations of the financial

worth of persons committed or admitted to the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-410. Repealed.**Repeal**

Section 38-410 (Sec. 1, Ch. 129, L. 1955), relating to the procedure for determining

financial ability of applicant for admission to state hospital, was repealed by Sec. 3, Ch. 102, Laws 1969.

38-411, 38-412. Repealed.**Repeal**

These sections (Secs. 2, 3, Ch. 129, L. 1955), relating to the charges for care and maintenance of persons voluntarily

admitted to the Montana state hospital, were repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 5—CONVALESCENT LEAVE OF PATIENTS

Section 38-502. Convalescent leave of patients from Montana state hospital.

38-504. Termination of convalescent leave.

38-505. Report by person under whom patient is placed on convalescent leave.

38-502. Convalescent leave of patients from Montana state hospital. The superintendent of the Montana state hospital may grant a convalescent leave to a patient under general conditions prescribed by the state department of public institutions.

History: En. Sec. 2, Ch. 145, L. 1941; amd. Sec. 1, Ch. 152, L. 1957; amd. Sec. 27, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "state board of commissioners for the insane."

38-504. Termination of convalescent leave. All such patients, while on convalescent leave, shall remain in the legal custody, and under the control of the state department of public institutions, and at any time during such convalescent leave, upon evidence satisfactory to the superintendent or to the state department of public institutions, that convalescent leave should terminate, such patient must be returned to the Montana state hospital. The written order of the state department of public institutions, certified by the superintendent of the hospital, shall be sufficient warrant to any officer to retake and return such patient to actual custody in the Montana state hospital.

History: En. Sec. 4, Ch. 145, L. 1941;
amd. Sec. 3, Ch. 152, L. 1957; amd. Sec.
28, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" in three places for "state board of commissioners for the insane."

38-505. Report by person under whom patient is placed on convalescent leave. The person to whom such person shall be placed on convalescent leave shall report the physical, moral and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to such recommendations and regulations as the state department of public institutions may determine. In case of failure so to report on request, the inmate may be returned to the Montana state hospital. The patient shall be accessible to representatives of the hospital.

History: En. Sec. 5, Ch. 145, L. 1941;
amd. Sec. 4, Ch. 152, L. 1957; amd. Sec.
29, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" for "state board of commissioners for the insane" near the end of the first sentence.

CHAPTER 6—EUGENICAL STERILIZATION LAW

(Repealed—Section 1, Chapter 310, Laws of 1969)

38-601 to 38-608. (1444.1 to 1444.8) Repealed.

Repeal

Sections 38-601 to 38-608 (Secs. 1 to 8, Ch. 164, L. 1923), known as the Eugenical

Sterilization Law, were repealed by Sec. 1, Ch. 310, Laws 1969, effective March 11, 1969.

CHAPTER 7—ALCOHOLISM SERVICES CENTER

(Repealed—Section 15, Chapter 112, Laws of 1963; Section 101, Chapter 199, Laws of 1965)

38-701 to 38-711. (1445 to 1455) Repealed.

Repeal

These sections (Secs. 1, 2, 4 to 12, Ch. 139, L. 1911; Secs. 1, 2, Ch. 130, L. 1955) relating to the state hospital for inebriates, were repealed by Sec. 15, Ch. 112, Laws

1963. Section 38-702 was also repealed by Sec. 82, Ch. 266, Laws 1963, and sections 38-707 and 38-708 were also repealed by Sec. 10, Ch. 213, Laws 1963.

38-712 to 38-724. Repealed.

Repeal

These sections (Secs. 1 to 13, Ch. 112, L. 1963), relating to the alcoholism serv-

ices center, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 8—MONTANA STATE TRAINING SCHOOL AND HOSPITAL

(Repealed—Section 10, Chapter 213, Laws of 1963; Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965)

38-801. Repealed.

Repeal

This section (Sec. 1, Ch. 183, L. 1943; Sec. 1, Ch. 37, L. 1959), relating to the

establishment of the Montana state training school and hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-802. Repealed.

Repeal

This section (Sec. 2, Ch. 183, L. 1943; Sec. 54, Ch. 266, L. 1963), describing the

purposes of the state training school and hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-803. Repealed.

Repeal

This section (Sec. 3, Ch. 183, L. 1943), relating to the powers and duties of the

state board of education, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-804 to 38-807. Repealed.

Repeal

These sections (Secs. 4 to 7, Ch. 183, L. 1943; Secs. 55, 56, Ch. 266, L. 1963), relating to the powers of the superin-

tendent and to admissions to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-808, 38-809. Repealed.

Repeal

These sections (Secs. 8, 9, Ch. 183, L. 1943; Sec. 1, Ch. 186, L. 1953; Sec. 1,

Ch. 73, L. 1959), relating to payment of expenses by inmates or their parents, were repealed by Sec. 10, Ch. 213, Laws 1963.

38-809.1. Repealed.

Repeal

This section (Sec. 2, Ch. 73, L. 1959), relating to county investigation of the financial condition of persons responsible

for the expense of maintenance of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-810, 38-811. Repealed.

Repeal

These sections (Secs. 10, 11, Ch. 183, L. 1943), relating to the procedure for

commitment to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-812. Repealed.

Repeal

This section (Sec. 12, Ch. 183, L. 1943; Sec. 2, Ch. 186, L. 1953; Sec. 3, Ch. 73, L.

1959), relating to orders for support of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-813 to 38-816. Repealed.

Repeal

These sections (Secs. 13 to 16, Ch. 183, L. 1943; Sec. 9, Ch. 213, L. 1963), relating to admission to and discharge and trans-

fer from the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-817, 38-818. Repealed.

Repeal

These sections (Secs. 17, 18, Ch. 183, L. 1943), relating to the executive board of the training school, and containing a

repeal of early laws pertaining to the school, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-819. Repealed.

Repeal

This section (Sec. 1, Ch. 11, L. 1943), relating to the transfer of inmates from

the state training school to the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 9—LEASES OF FARM LAND FOR STATE HOSPITAL AND
STATE PENITENTIARY AUTHORIZED

(Repealed—Section 82, Chapter 266, Laws of 1963)

38-901, 38-902. **Repealed.**

Repeal

These sections (Secs. 1, 2, Ch. 209, L. 1943), relating to leases of farm land for

the state hospital and state prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 10—STATE DEPARTMENT OF MENTAL HYGIENE

(Repealed—Section 101, Chapter 199, Laws of 1965)

38-1001 to 38-1003. **Repealed.**

Repeal

These sections (Secs. 1 to 3, Ch. 103, L. 1947; Sec. 30, Ch. 266, L. 1963), establish-

ing a state department of mental hygiene, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 11—HOME FOR SENILE MEN AND WOMEN

38-1101. **Repealed.**

Repeal

This section (Sec. 6, Ch. 206, L. 1949; Sec. 57, Ch. 266, L. 1963), defining terms

for purposes of the chapter, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1106. **Repealed.**

Repeal

This section (Sec. 11, Ch. 206, L. 1949; Sec. 2, Ch. 230, L. 1959), relating to the

maintenance of inmates of the home for senile men and women, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1108 to 38-1112. **Repealed.**

Repeal

These sections (Secs. 13 to 17, Ch. 206, L. 1949; Sec. 3, Ch. 230, L. 1959; Sec. 58, Ch. 266, L. 1963), relating to commitment,

transfer and release of inmates of the home for senile men and women, were repealed by Sec. 101, Ch. 199, Laws 1965.

TITLE 39—INSTRUMENTS, ACKNOWLEDGMENT AND PROOF

Chapter 1. Acknowledgment and proof of instruments, 39-135 to 39-138.

CHAPTER 1—ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

- Section 39-135. Validation of unacknowledged deeds executed before 1965.
39-136. Validation of unacknowledged deeds executed before 1967.
39-137. Validation of unacknowledged deeds executed before 1969.
39-138. Validation of unacknowledged deeds executed before 1971.

39-135. Validation of unacknowledged deeds executed before 1965.

All deeds to real property heretofore executed in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 123, L. 1965. conclusive evidence of title against the grantors, containing a repealing clause.

Title of Act

An act validating deeds and conveyances heretofore made which are defective in execution or acknowledgment, providing that such instruments shall be con-

Repealing Clause

Section 2 of Ch. 123, Laws 1965 repealed all acts and parts of acts in conflict therewith.

39-136. Validation of unacknowledged deeds executed before 1967.

All deeds to real property executed prior to January 1, 1967 in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 183, L. 1967. are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1967 which

39-137. Validation of unacknowledged deeds executed before 1969.

All deeds to real property executed prior to January 1, 1969, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the

legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 77, L. 1969.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1969,

which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

39-138. Validation of unacknowledged deeds executed before 1971.

All deeds to real property executed prior to January 1, 1971, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 95, L. 1971.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1971,

which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

TITLE 40—INSURANCE AND INSURANCE COMPANIES

- Chapter 27. The commissioner of insurance, 40-2709, 40-2716, 40-2717, 40-2726.
28. Authorization of insurers and general requirements, 40-2820 to 40-2822.
30. Assets and liabilities, 40-3011.
33. Agents, solicitors and adjusters, 40-3308 to 40-3311, 40-3313, 40-3314, 40-3321, 40-3327, 40-3328, 40-3332 to 40-3338.
35. Trade practices and frauds, 40-3506, 40-3512.
36. Rates and rating organizations, 40-3634 to 40-3669.
37. The insurance contract, 40-3729, 40-3738 to 40-3740.
38. Life insurance and annuities, 40-3802, 40-3831.
39. Group life insurance, 40-3905.1, 40-3906.
41. Group and blanket disability insurance, 40-4108, 40-4109.
42. Credit life and disability insurance, 40-4203, 40-4211.
44. Casualty insurance contracts, 40-4402 to 40-4416.
47. Organization and corporate procedures of stock and mutual insurers, 40-4705, 40-4745, 40-4751 to 40-4758.
48. Farm mutual insurers, 40-4804, 40-4807.
49. Benevolent associations, 40-4917, 40-4918.
53. Fraternal benefit societies, 40-5321.
54. Extended health insurance for older persons, 40-5401 to 40-5408.
55. Insurance holding companies, 40-5501 to 40-5522.
56. Workmen's compensation insurance premium rates, 40-5601 to 40-5618.
57. Insurance guaranty association, 40-5701 to 40-5718.

CHAPTER 17—SURETY COMPANIES

40-1727. (6236) Repealed.

Repeal

This section (Sec. 3, Ch. 6, L. 1911; Sec. 1, Ch. 145, L. 1923; Sec. 1, Ch. 45, L. 1935; Sec. 19, Ch. 177, L. 1965), relating to the official bonds of county, city

and township officers, was repealed by Sec. 10, Ch. 68, Laws 1967. For new provisions relating to bonds of county officers and employees, see sec. 6-203 et seq.

CHAPTER 26—SCOPE OF CODE

40-2611. Exempted organizations, activities.

Compiler's Notes

Section 15-1401, referred to in this sec-

tion in the parent volume, was repealed by Sec. 98, Ch. 198, Laws 1967.

40-2617. General penalty.

Applicability

Separate penalty section here provided is applicable to violation of section 40-4011 requiring prompt payment of claims.

State ex rel. Larson v. District Court, Eighth Judicial District, 149 M 131, 423 P 2d 598.

CHAPTER 27—THE COMMISSIONER OF INSURANCE

Section 40-2709. General powers, duties.

40-2716. Examination reports.

40-2717. Examination expense.

40-2726. Fees and licenses.

40-2709. General powers, duties. (1) to (3). * * * [Same as parent volume.]

(4) The commissioner may, after having conducted a hearing, pursuant to section 40-2720, impose a fine not to exceed the sum of five thousand dollars (\$5,000) upon a person found to have violated any provision of this code or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed five hundred dollars (\$500). Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of section 40-2725.

(5) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

History: En. Sec. 28, Ch. 286, L. 1959; and Amendments
amd. Sec. 1, Ch. 16, L. 1969.

The 1969 amendment inserted subsection (4) and redesignated former subsection (4) as subsection (5).

40-2712. Repealed.

Repeal Section 40-2712, Laws of Montana, 1959, relating to the commissioner's annual report, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see sections 82-4001 and 82-4002.

40-2716. Examination reports. (1) and (2). * * * [Same as parent volume.]

(3) Any director, officer, agent or employee of any company who destroys any books, records or documents required to be kept by law for the purpose of hindering any examination in violation of the requirements of this section shall be punished by a fine of not more than one thousand dollars (\$1,000), and, after a hearing thereon for that purpose, the commissioner may revoke the certificate of authority of such company.

(4) The commissioner shall furnish a copy of the proposed report to the person examined not less than twenty (20) days prior to filing the same in his office. If such person so requests in writing within such twenty-day period, the commissioner shall grant a hearing with respect to the report, and shall not so file the report until after the hearing and after such modifications, if any, have been made therein as the commissioner deems proper.

(5) The report when so verified and filed shall be presumptive evidence, in any action or proceeding brought by the commissioner against the person examined, or against its officers or agents, of the facts stated therein. The commissioner and his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the commissioner's office.

(6) The commissioner may withhold from public inspection any examination or investigation report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

(7) If he deems such to be in the public interest the commissioner may publish any such examination report or a summary thereof in one or more newspapers in the state.

History: En. Sec. 35, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 28, L. 1967.

Amendments

The 1967 amendment inserted a new subsection (3) and redesignated former subsections (3) through (6) as present subsections (4) through (7).

40-2717. Examination expense. (1). * * * [Same as parent volume.]

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received pursuant to subsection (1) above.

(3). * * * [Same as parent volume.]

History: En. Sec. 36, Ch. 286, L. 1959;
amd. Sec. 72, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote subsection (2). For previous text, see parent volume.

40-2725. Appeals from the commissioner.

Compiler's Notes

Section 40-3633, referred to in subsection (8), was repealed by Sec. 37, Ch.

362, Laws of 1969. For a similar provision in current law, see section 40-3664.

40-2726. Fees and licenses. (1) The commissioner shall collect in advance, and the persons so served shall so pay to the commissioner, the following fees and licenses:

(a) Certificates of authority.

(i). * * * [Same as parent volume.]

(ii) Annual continuation of certificate of authority-----300.00

(iii). * * * [Same as parent volume.]

(b) (i) and (ii). * * * [Same as parent volume.]

(c) and (d). * * * [Same as parent volume.]

(e) (i) to (iv). * * * [Same as parent volume.]

(f) (i) and (ii). * * * [Same as parent volume.]

(g) (i) to (iii). * * * [Same as parent volume.]

(h). * * * [Same as parent volume.]

(i) (i) and (ii). * * * [Same as parent volume.]

(j) (i) and (ii). * * * [Same as parent volume.]

(k) to (m). * * * [Same as parent volume.]

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 45, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 32, L. 1969.

Amendments

The 1969 amendment raised the fee for an annual continuation of certificate of authority provided in item (1)(a)(ii) from \$25 to \$300.

Compiler's Notes

Section 25-101 referred to in subsection (3), was repealed by Sec. 673, Ch. 286, Laws of 1959.

CHAPTER 28—AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

- Section 40-2820. Annual statement.
 40-2821. Tax.
 40-2822. Resident agent required—countersignature—records—exceptions.

40-2818. Commissioner attorney for service of process.

Venue of Action

Statute cannot be construed, for purpose of venue, under statute providing that actions be tried in county in which defendants reside, as giving a foreign insurance company residency in county

of insurance commissioner, serving as agent of insurance company for service of process. *Truck Ins. Exchange v. National Farmers Union Property & Cas. Co.*, 149 M 357, 427 P 2d 50.

40-2820. Annual statement. (1) to (3). * * * [Same as parent volume.]

(4) Any director, officer or agent or employee of any company who subscribes to, makes, or concurs in making, or publishing, any annual statement, or any other statement required by law, knowing the same to contain any material statement which is false shall be punished by a fine of not more than one thousand dollars (\$1,000).

(5) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in section 40-2726.

History: En. Sec. 65, Ch. 286, L. 1959;
 amd. Sec. 1, Ch. 27, L. 1967.

Amendments

The 1967 amendment added a new subsection (4) and redesignated former subsection (4) as present subsection (5).

40-2821. Tax. (1). * * * [Same as parent volume.]

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums, the tax to be computed at the rate of two and three-quarters per cent (2-3/4%) of such premiums.

Provided, that where any insurer has not less than fifty per cent (50%) of its paid-in capital stock invested in Montana securities, the insurer shall be allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section. For the purpose of this provision "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to ten per cent (10%) of the insurer's assets; and "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(3) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, as defined in section 40-2907, written in this state during the calendar year next preceding, and shall at the same

time pay to the commissioner a tax of three-quarters of one per cent ($\frac{3}{4}$ of 1%) of such gross underwriting profit.

(b) * * * [Same as parent volume.]

(4) to (7) * * * [Same as parent volume.]

(8) The provisions of this section shall apply to taxable years beginning after December 31, 1968.

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971.

Amendments

The 1963 amendment substituted "1963 and 1964" for "1961 and 1962" in the proviso to the first paragraph of subsection (2).

The 1965 amendment substituted "1965 and 1966" for "1963 and 1964" in the proviso to the first paragraph of subsection (2).

The 1967 amendment substituted "1967 and 1968" for "1965 and 1966" in the proviso to the first paragraph of subsection (2).

The 1969 amendment, in subsection (2), substituted "1969 and 1970" for "1967 and 1968" and "two and three-quarters per cent ($2\frac{3}{4}\%$)" for "two and one-quarter per cent ($2\frac{1}{4}\%$)."

The 1971 amendment increased the tax rate set forth in the first paragraph of subsection (2) from 2% to $2\frac{3}{4}\%$; deleted a former proviso to the first paragraph of subsection (2) reading, "provided that for each of the calendar years 1969 and 1970 the tax shall be computed at the rate of two and three-quarters per cent ($2\frac{3}{4}\%$) of such premiums"; substituted "December 31, 1968" for "December 31, 1960" in subsection (8); and made a minor change in style.

Effective Date

Section 2 of Ch. 237, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

Cross-Reference

Payments to cities and towns from proceeds of tax on motor vehicle insurance premiums, secs. 11-1834 to 11-1837.

40-2822. Resident agent required—countersignature—records—exceptions. (1) and (2). * * * [Same as parent volume.]

(3) This section shall not apply to:

(a) Reinsurance.

(b) Life insurance, disability insurance or annuity contracts.

(c) Insurance of the rolling stock, vessels or aircraft of any common carrier in interstate or foreign commerce, or of any vehicle principally garaged and used in another state, or covering any liability or other risks incident to the ownership, maintenance or operation thereof.

(d) Insurance of property in course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

(e) Insurance of wet marine and transportation risks.

(f) With respect to countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business.

(g) Bid bonds, as required under section 6-501, R.C.M. 1947.

(4). * * * [Same as parent volume.]

History: En. Sec. 67, Ch. 286, L. 1959; amd. Sec. 1, Ch. 72, L. 1963.

Amendment

The 1963 amendment added clause (g) to subsection (3).

CHAPTER 30—ASSETS AND LIABILITIES

Section 40-3011. Standard valuation law—life insurance.

40-3011. Standard valuation law—life insurance. (1) and (2). * * * [Same as parent volume.]

(3) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 40-3831 (the standard nonforfeiture law).

(a) The minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in subdivision (b), three and one-half per cent ($3\frac{1}{2}\%$) interest, and the following tables:

(i). * * * [Same as parent volume.]

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 standard industrial mortality table for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date.

(iii) to (vii). * * * [Same as parent volume.]

(b) and (c). * * * [Same as parent volume.]

(d) Reserves for any category of policies, contracts or benefits as established by the commissioner, may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest [lower than the rate of interest] used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half per cent ($\frac{1}{2}\%$) the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(e). * * * [Same as parent volume.]

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965.

appear in the 1965 amendatory act, apparently through clerical error.

Compiler's Note

The compiler has inserted the bracketed words "lower than the rate of interest" in paragraph (3) (d). These words did not

Amendment

The 1965 amendment added at the end of paragraph (3) (a) (ii) the words "for such policies issued prior to the operative date of subsection (8-b) of section 40-

3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date"; and, apparently through clerical error, deleted from paragraph (3) (d) the words enclosed above in brackets.

Effective Date

Section 2 of Ch. 41, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

CHAPTER 33—AGENTS, SOLICITORS AND ADJUSTERS

- Section 40-3308. General qualifications, resident agents and solicitors—other than life insurance agents.
- 40-3309. General qualification for license as life or disability insurance agent.
- 40-3310. Licensing of firms and corporations.
- 40-3311. Licensing of resident agents' association.
- 40-3313. Examination.
- 40-3314. Conduct of examinations.
- 40-3321. Special requirements as to solicitors.
- 40-3327. Adjuster's license—qualifications—catastrophe adjustments.
- 40-3328. Continuance, expiration of licenses.
- 40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty.
- 40-3333. Nonresident agent may be licensed—reciprocity.
- 40-3334. Nonresident agent's right to solicit business contingent upon reciprocal arrangement.
- 40-3335. Nonresident agent must be licensed in state of residence—limitation as to insurers which may be represented—certification by state of residence.
- 40-3336. Limitations as to coverage.
- 40-3337. Commissioner as attorney in fact of nonresident agent to accept service of process.
- 40-3338. Nonresident agent subject to provisions of the Montana Insurance Code.

40-3308. General qualifications, resident agents and solicitors—other than life insurance agents. (1) For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any resident agent or solicitor license as to insurance other than life or disability, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(a) Must be eighteen (18) years of age or more, or, if for a solicitor's license, must be at least eighteen (18) years of age.

(b) Must be a resident in and of this state.

(c) If for a resident agent's license, must have been appointed as agent by an authorized insurer, subject to issuance of the license.

(d) If for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation.

(e) to (h). * * * [Same as parent volume.]

(2) In determining the qualifications as to competence, training, experience and knowledge of the provisions of this code governing his operations as a resident insurance agent or solicitor, as provided for in subsection (1) above, of applicant agents or solicitors proposing to represent as such only insurers who confine their business in this state substantially to the insuring of the property, interests and risks of farmers,

the commissioner shall relate such qualifications only to the kinds of insurance policies which the applicant will handle as such a licensee.

History: En. Sec. 152, Ch. 286, L. 1959; amd. Sec. 7, Ch. 44, L. 1969; amd. Sec. 5, Ch. 423, L. 1971.

Amendments

The 1969 amendment inserted "resident" before "agent" where the references appear.

The 1971 amendment reduced the age specified near the beginning of subdivision (1)(a) from 21 to 18 years.

40-3309. General qualification for license as life or disability insurance agent. For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any agent license as to life or disability insurance except in compliance with this chapter or as to any individual not qualified therefor as follows:

(1). * * * [Same as parent volume.]

(2) Must be a resident in and of this state; or of another state, if by reciprocal arrangements made by the commissioner with such other state similar privileges therein are granted to residents of this state.

(3) to (8). * * * [Same as parent volume.]

History: En. Sec. 153, Ch. 286, L. 1959; amd. Sec. 8, Ch. 44, L. 1969.

sentence of subsection (2) which designated the commissioner as attorney-in-fact of any nonresident agent for acceptance of service of process.

Amendments

The 1969 amendment omitted the second

40-3310. Licensing of firms and corporations. (1). * * * [Same as parent volume.]

(2) A nonresident of Montana shall not be named in such license and shall not have the right to exercise the license powers.

(3) A license shall not be issued to a firm or corporation unless organized under the laws of this state and maintaining its principal place of business in this state, and unless the transaction of business under the license is within the purposes stated in the firm's partnership agreement or the corporation's articles.

(4) The licensee shall promptly notify the commissioner of all changes among its members, directors, and officers and of any other individual designated in the license.

History: En. Sec. 154, Ch. 286, L. 1959; amd. Sec. 9, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted subsection (2) and redesignated former subsections (2) and (3) as subsections (3) and (4).

40-3311. Licensing of resident agents' association. (1) The commissioner may license as a resident agent as to kinds of insurance other than life and disability, any association of licensed Montana insurance agents, whether or not incorporated, and formed and existing for substantial purposes other than as to such license.

(2) The license shall be used solely for the purpose of enabling any such association to place, as resident agent, insurance of the properties, interests and risks of the state of Montana and of other public agencies, bodies and institutions, and to receive the customary commission thereon.

(3). * * * [Same as parent volume.]

(4) The license powers may be exercised by such resident agents as may be appointed from time to time for the purpose of the association's board of trustees. The association shall forthwith file the names of such appointees with the commissioner. The names of such appointees need not appear in the license.

(5) The fee for such license shall be the same as for the license of an individual resident agent.

(6) Under the license the association may place insurance with any insurer represented as resident agent by any member of the association, and without requiring that the association have an appointment as resident agent by any such insurer; otherwise, the license shall be subject to the same requirements and prohibitions as apply to individual resident agent licenses.

(7) The commissioner may, after a hearing with notice thereof to the association only (and without notice to the individual officers or members of the association), revoke the license if he finds that continuation thereof is not in the public interest, or for such other applicable grounds as are available under this chapter in the case of individuals licensed as resident agents.

History: En. Sec. 155, Ch. 286, L. 1959;
amd. Sec. 10, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "resident" before "agent" where the references appear.

40-3313. **Examination.** (1) and (2). * * * [Same as parent volume.]

(3) (a) to (f). * * * [Same as parent volume.]

(4). * * * [Same as parent volume.]

(5) This section shall not apply to, and no such examination shall be required of:

(a) and (b). * * * [Same as parent volume.]

(c) Any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code.

(d). * * * [Same as parent volume.]

(e) (i) and (ii). * * * [Same as parent volume.]

(f) and (g). * * * [Same as parent volume.]

History: En. Sec. 157, Ch. 286, L. 1959;
amd. Sec. 11, Ch. 44, L. 1969.

Amendments

The 1969 amendment rewrote subdivision (5)(c) which provided exemption from examination for "Nonresident applicants for license as life insurance agents."

40-3314. **Conduct of examinations.** (1) The commissioner shall make any examination required under section 40-3313 available to ap-

plicants with reasonable frequency, and at place in this state reasonably accessible to such applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion, but at least once a month.

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 158, Ch. 286, L. 1959; **Effective Date** amd. Sec. 1, Ch. 156, L. 1969.

Section 2 of Ch. 156, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Amendments

The 1969 amendment substituted "at times within his discretion, but at least once a month" for "on each business day" at the end of subsection (1).

40-3321. Special requirements as to solicitors. (1) A solicitor shall not be appointed or licensed as to more than one resident agent.

(2) The solicitor's license shall cover all the kinds of insurance, other than life and disability insurance, for which the appointing resident agent is licensed; except, that the solicitor's license shall also cover disability insurance where written by a casualty, property, or surety insurer represented by the resident agent.

(3) A solicitor shall not concurrently be licensed as resident agent except as to life or disability insurance.

(4) A solicitor shall not have authority to bind risks or counter-sign policies.

(5) The transactions of a solicitor under his license shall be in the name of the resident agent by whom appointed, and such resident agent shall be responsible for the acts or omissions of the solicitor within the scope of his appointment.

(6) The solicitor shall maintain his office with that of the appointing resident agent, and records of his transactions under the license shall be maintained as a part of the records of such resident agent.

(7) The solicitor's license shall remain in the custody of the resident agent by whom appointed. Upon termination of the appointment, the resident agent shall give written notice thereof to the commissioner and deliver the license to the commissioner for cancellation.

History: En. Sec. 165, Ch. 286, L. 1959; amd. Sec. 12, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "resident" before "agent" where the references appear.

40-3327. Adjuster's license—qualifications—catastrophe adjustments.

(1) * * * [Same as parent volume.]

(2) To be licensed as an adjuster the applicant must be qualified therefor as follows:

(a) Must be an individual eighteen (18) years of age or more.

(b) to (e) * * * [Same as parent volume.]

(3) and (4) * * * [Same as parent volume.]

History: En. Sec. 171, Ch. 286, L. 1959; amd. Sec. 6, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subdivision (2)(a) from 21 to 18 years.

40-3328. Continuance, expiration of licenses. (1) All solicitor and adjuster licenses issued under this chapter, all agent licenses as to life and/or disability insurance only, and all nonresident agent licenses shall continue in force until expired, suspended, revoked or terminated, but subject to payment to the commissioner annually on or before May 1 of the applicable continuation fee as stated in section 40-2726, accompanied by written request for such continuation. Such request for continuation as to agent licenses for life insurance and/or disability insurance only, shall be made by the insurer in the form of an alphabetical list in duplicate of the names and addresses of its agents whose licenses are to be continued in this state, accompanied by payment of the annual continuation fee therefor as provided in section 40-2726. At the same time the insurer shall also file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose licenses in this state are not to remain in effect. Section 40-3317 (5) shall apply as to any licenses so terminated by the insurer. As to a solicitor's license, such request shall be signed by the agent by whom the licensee is employed.

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 172, Ch. 286, L. 1959;
amd. Sec. 13, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "all non-resident agent licensees" in the first sentence of subsection (1).

40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty. Any person, firm, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster, without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and fined five hundred dollars (\$500) or imprisoned in the county jail for ninety (90) days, or both such fine and imprisonment.

History: En. 40-3332 by Sec. 1, Ch. 256, L. 1967.

Title of Act

An act to provide a penalty for operating without a license as an insurance agent, solicitor, or adjuster.

40-3333. Nonresident agent may be licensed—reciprocity. The commissioner may license as an agent a person who is otherwise qualified under this code but who is not a resident of this state, if pursuant to the laws of the state of his residence a similar privilege is extended to persons resident in Montana.

History: En. Sec. 1, Ch. 44, L. 1969.

Title of Act

An act to provide for licensing nonresident insurance agents domiciled in states

which grant reciprocal privileges to Montana agents; amending sections 40-3308 through 40-3311, 40-3313, 40-3321 and 40-3328, R. C. M. 1947, to ensure that such sections apply to resident agents only.

40-3334. Nonresident agent's right to solicit business contingent upon reciprocal arrangement. A licensed nonresident agent shall not have the right to solicit business in Montana unless pursuant to a reciprocal

arrangement made by the commissioner with the insurance supervisory official of the licensee's state of residence.

History: En. Sec. 2, Ch. 44, L. 1969.

40-3335. Nonresident agent must be licensed in state of residence—limitation as to insurers which may be represented—certification by state of residence. An applicant for a nonresident license must be licensed in the state of his residence to act as agent for the kinds of insurance for which he applies for licensing in the state of Montana. The nonresident agent shall be licensed to represent only those insurers which he is licensed to represent in the state of his residence and which are licensed in the state of Montana. The insurance supervisory official of the applicant's state of residence must certify that the applicant is licensed and to the extent of the license.

History: En. Sec. 3, Ch. 44, L. 1969.

40-3336. Limitations as to coverage. A nonresident agent shall not sign nor countersign policies covering subjects of insurance located or to be performed in Montana. These policies must be countersigned by a licensed resident agent.

History: En. Sec. 4, Ch. 44, L. 1969.

40-3337. Commissioner as attorney in fact of nonresident agent to accept service of process. Application for and acceptance of a license as a nonresident agent shall constitute irrevocable appointment of the commissioner as the attorney in fact of said licensee to accept service of process issued in Montana in any action or proceeding against the licensee arising out of the licensing or out of transactions under the license. All process shall be served in duplicate upon the commissioner together with a fee of five dollars (\$5). The commissioner shall then promptly forward a copy of the service by registered mail to the licensee at his last known address. Such service shall constitute personal service upon the licensee.

History: En. Sec. 5, Ch. 44, L. 1969.

40-3338. Nonresident agent subject to provisions of the Montana Insurance Code. All nonresident licensees shall be subject to the provisions of the Montana Insurance Code as though a resident of this state unless otherwise provided.

History: En. Sec. 6, Ch. 44, L. 1969.

CHAPTER 35—TRADE PRACTICES AND FRAUDS

Section 40-3506. False financial statements.

40-3512. Unfair discrimination, rebates prohibited—property, casualty, surety insurances.

40-3506. False financial statements. (1). * * * [Same as parent volume.]

(2) No person shall make any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully

appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer, and any person who aids or abets in any such violation of this section shall be punishable, upon conviction, by a fine of one thousand dollars (\$1,000) or by imprisonment in the county jail for six (6) months, or both such fine and imprisonment.

History: En. Sec. 208, Ch. 268, L. 1959; amd. Sec. 1, Ch. 29, L. 1967.

person who aids or abets * * * or both such fine and imprisonment" at the end of the section.

Amendments

The 1967 amendment added "and any

40-3512. Unfair discrimination, rebates prohibited—property, casualty, surety insurances. (1) and (2). * * * [Same as parent volume.]

(3) No such insurer shall make or permit any unfair discrimination either between insureds or property having like insuring or risk characteristics, or between insureds because of race, color, creed, or national origin, in the premium or rates charged for insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance.

(4). * * * [Same as parent volume.]

History: En. Sec. 214, Ch. 286, L. 1959; amd. Sec. 1, Ch. 191, L. 1969.

after "unfair discrimination" and "or between insureds because of race, color, creed, or national origin," after "risk characteristics" in subsection (3).

Amendments

The 1969 amendment inserted "either"

CHAPTER 36—RATES AND RATING ORGANIZATIONS

- Section 40-3634. Purpose and intent of chapter.
 40-3635. "Rating organization" defined.
 40-3636. "Advisory organization" defined.
 40-3637. "Member" and "subscriber" defined.
 40-3638. "Willful" and "willfully" defined.
 40-3639. Scope of chapter.
 40-3640. Standards applicable to rates.
 40-3641. Insurers authorized to act in concert.
 40-3642. Admitted insurers with common ownership or management—matters relating to cosurety bonds.
 40-3643. Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto.
 40-3644. Exchange of information or experience data—consultation with rating organizations and insurers.
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- 40-3653. Joint underwriting and joint reinsurance.
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- 40-3655. Records and examination.
- 40-3656. Examination of admitted insurers.
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- 40-3662. Issuance of order—suspension or revocation of certificate of authority or license.
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- 40-3664. Appeals from the commissioner.
- 40-3665. Information not to be willfully withheld.
- 40-3666. Payment of dividends, etc., not prohibited or regulated—plan for payment not rating system.
- 40-3667. Acts, etc., done by authority of chapter not violation of other laws.
- 40-3668. Administration or enforcement of chapter—supplementation or modification.
- 40-3669. Recording and reporting of loss and expense experience.

40-3601 to 40-3633. Repealed.

Repeal Sections 40-3601 to 40-3633 (Secs. 225 to 257, Ch. 286, L. 1959), relating to the regulation of insurance rates, were repealed by Sec. 37, Ch. 362, Laws 1969.

40-3634. Purpose and intent of chapter. The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize co-operation between insurers in rate-making and other related matters.

It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis, and nothing in this chapter is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. Sec. 1, Ch. 362, L. 1969.

Title of Act

An act to provide for regulation of insurance rates and rating organizations, ad-

visory organizations and joint underwriting and joint reinsurance; and repealing sections 40-3601 through 40-3633, R. C. M. 1947.

40-3635. "Rating organization" defined. In this chapter "rating organization" means every person, other than an admitted insurer, whether located within or outside this state, who has as his object or purpose the making of rates, rating plans or rating systems. Two or more admitted insurers which act in concert for the purpose of making rates, rating plans or rating systems, and which do not operate within the specific authorizations contained in sections 9, 11, 12, 20 and 21 [40-3642, 40-3644, 40-3645, 40-3653 and 40-3654] shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

History: En. Sec. 2, Ch. 362, L. 1969.

40-3636. "Advisory organization" defined. In this chapter "advisory organization" means every person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney at law, acting in the usual course of his profession, shall be deemed to be an advisory organization.

History: En. Sec. 3, Ch. 362, L. 1969.

40-3637. "Member" and "subscriber" defined. Unless otherwise apparent from the context, in this chapter:

(a) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.

(b) "Subscriber" means an insurer which is furnished at its request (1) with rates and rating manuals by a rating organization of which it is not a member; or (2) with advisory services by an advisory organization of which it is not a member.

History: En. Sec. 4, Ch. 362, L. 1969.

40-3638. "Willful" and "willfully" defined. In this chapter "willful" or "willfully," in relation to an act or omission which constitutes a violation of this chapter, means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

History: En. Sec. 5, Ch. 362, L. 1969.

40-3639. Scope of chapter. This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter shall apply to:

- (1) Life insurance.
- (2) Disability insurance.
- (3) Reinsurance, except joint reinsurance as provided in section 20 [40-3653] of this chapter.
- (4) Insurance against loss of or damage to aircraft, their hulls, accessories and equipment, or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft.
- (5) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.
- (6) Title insurance.
- (7) Workmen's compensation or employers' liability insurance written in connection with workmen's compensation.

History: En. Sec. 6, Ch. 362, L. 1969.

40-3640. Standards applicable to rates. The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided, and (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided, and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(b) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both country-wide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state; and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available.

Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(c) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(d) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

History: En. Sec. 7, Ch. 362, L. 1969.

40-3641. Insurers authorized to act in concert. Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to

engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

History: En. Sec. 8, Ch. 362, L. 1969.

40-3642. Admitted insurers with common ownership or management—matters relating to cosurety bonds. With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this state under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to cosurety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

History: En. Sec. 9, Ch. 362, L. 1969.

40-3643. Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto. Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in sections 9, 12, 20 and 21 [40-3642, 40-3645, 40-3653 and 40-3654], shall not agree with each other or rating organizations or others to adhere thereto. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

History: En. Sec. 10, Ch. 362, L. 1969.

40-3644. Exchange of information or experience data—consultation with rating organizations and insurers. Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to rate-making and the application of rating systems.

History: En. Sec. 11, Ch. 362, L. 1969.

40-3645. Agreements for apportionment of casualty insurance—approval of commissioner—review of practices of adherents—revocation of approval. (a) Agreements may be made among admitted insurers with respect to the equitable apportionment among them of casualty insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods, and with respect to the use of reasonable rate modifications for such insurance, such agreements to be subject to the approval of the commissioner.

(b) All such agreements shall be submitted in writing to the commissioner for his consideration and approval, together with such information as he may reasonably require. The commissioner shall approve only such agreements as are found by him to contemplate (a) the use of rates which meet the standards prescribed by this chapter, and (b) activities and practices that are not unfair, unreasonable or otherwise inconsistent with the provisions of this chapter.

At any time after such agreements are in effect the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing upon not less than ten (10) days' notice to such adherents, he finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this chapter, he may issue a written order to the parties to any such agreement, specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice. For good cause, and after hearing upon not less than ten (10) days' notice to the adherents thereto, the commissioner may revoke approval of any such agreement.

History: En. Sec. 12, Ch. 362, L. 1969.

40-3646. Joint underwriters and reinsurers. Upon compliance with the provisions of this chapter applicable thereto any rating organization, advisory organization, and any group, association or other organization of admitted insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement among the members thereof, may conduct operations in this state. As respects insurance risks or operations in this state, no insurer shall be a member or subscriber of any such organization, group or association that has not complied with the provisions of this chapter applicable to it.

History: En. Sec. 13, Ch. 362, L. 1969.

40-3647. Rating organizations. No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for, and securing a license to act as, a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter. Every such rating organization shall file with its application (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regula-

tions governing the conduct of its business, all duly certified by the custodian or the originals thereof, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and (d) a statement of its qualifications as a rating organization.

History: En. Sec. 14, Ch. 362, L. 1969.

40-3648. Evidence prerequisite to license. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(a) Permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination, or withdraw therefrom.

(b) Neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber, as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules or policy or bond forms.

(c) Neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(d) Neither practice nor sanction any plan or act of boycott, coercion or intimidation.

(e) Neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business.

(f) Notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

(g) Comply with the provisions of section 21 [40-3654].

History: En. Sec. 15, Ch. 362, L. 1969.

40-3649. Examination of application and investigation of applicant—issuance of license. The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs and its proposed plan of business as he deems desirable.

The commissioner shall issue the license applied for within sixty (60) days of its filing with him if, from such examination and investigation, he is satisfied that:

(a) The business reputation of the applicant and its officers is good.

(b) The facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish.

(c) The applicant and its proposed plan of operation conform to the requirements of this chapter.

Otherwise, but only after hearing upon notice the commissioner shall, in writing, deny the application and notify the applicant of his decision and his reasons therefor.

The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter.

History: En. Sec. 16, Ch. 362, L. 1969.

40-3650. Rules governing eligibility for membership. Subject to the approval of the commissioner, licensed rating organizations may make reasonable rules governing eligibility for membership.

History: En. Sec. 17, Ch. 362, L. 1969.

40-3651. Insurers with common ownership or management. If two or more insurers having a common ownership or operating in this state under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.

History: En. Sec. 18, Ch. 362, L. 1969.

40-3652. Advisory organizations. No advisory organization shall conduct its operations in this state unless and until it has filed with the commissioner (a) a copy of its constitution, articles of incorporation, agreement or association, and of its bylaws or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof; (b) a list of its members and subscribers; and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Every such advisory organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 19, Ch. 362, L. 1969.

40-3653. Joint underwriting and joint reinsurance. Every group, association or other organization of insurers which engages in joint un-

derwriting or joint reinsurance through such group, association or organization, or by standing agreement among the members thereof, shall file with the commissioner (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing its activities, all duly certified by the custodian of the originals thereof, (b) a list of its members, and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Every such group, association or other organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and its bylaws, rules and regulations governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such group, association or organization may be served.

No such group, association or organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 20, Ch. 362, L. 1969.

40-3654. Maintenance of records — necessity — contents — compliance with section—place of maintenance. Every insurer, rating organization or advisory organization, and every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members, and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group or association, and, in the case of an insurer or rating organization, every rate, rating plan and rating system made or used by it, complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

History: En. Sec. 21, Ch. 362, L. 1969.

40-3655. Records and examination. The commissioner shall, at least once every five (5) years, and may as often as may be reasonable and necessary, make or cause to be made, an examination of each licensed rating organization, and he may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory

organization or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance.

In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state.

In examining any organization, group or association pursuant to this section, the commissioner shall ascertain whether such organization, group or association, and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

History: En. Sec. 22, Ch. 362, L. 1969.

40-3656. Examination of admitted insurers. The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether such insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable thereto. Such examination shall not be a part of a periodic general examination participated in by representatives of more than one state.

History: En. Sec. 23, Ch. 362, L. 1969.

40-3657. Examination of officers, managers, agents and employees. The officers, managers, agents and employees of any such organization, group, association or insurer may be examined at any time under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation, together with all data, statistics and information of every kind and character collected or considered by such organization, group, association or insurer in the conduct of the operations to which such examination relates.

History: En. Sec. 24, Ch. 362, L. 1969.

40-3658. Payment of cost of examination. The reasonable cost of any examination authorized by this article shall be paid by the organization, group, association or insurer to be examined.

History: En. Sec. 25, Ch. 362, L. 1969.

40-3659. Review of rates. Any person aggrieved by any rate charged, rating plan, rating system or underwriting rule followed or adopted by an insurer or rating organization, may request the insurer or rating organization to review the manner in which the rate, plan, system or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be written. If the request is not granted within thirty (30) days after it is made, the requester may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested, or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the

commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in section 27 [40-3660].

History: En. Sec. 26, Ch. 362, L. 1969.

40-3660. Noncompliance of rates. If, after examination of an insurer, rating organization, advisory organization, or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in section 26 [40-3659], the commissioner has good cause to believe that such insurer, organization, group or association, or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is willful, give notice, in writing, to such insurer, organization, group or association stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten (10) days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under section 28 [40-3661].

History: En. Sec. 27, Ch. 362, L. 1969.

40-3661. Hearings. If the commissioner has good cause to believe such noncompliance to be willful, or if within the period prescribed by the commissioner in the notice required by section 27 [40-3660], the insurer, organization, group or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner, or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than ten (10) days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group or association. If no notice has been given as provided in section 27 [40-3660], such notice shall state therein in what manner and to what extent noncompliance is alleged to exist. The hearing shall not include any additional subjects not specified in the notices required by section 27 [40-3660] or this section.

History: En. Sec. 28, Ch. 362, L. 1969.

40-3662. Issuance of order—suspension or revocation of certificate of authority or license. If, after a hearing pursuant to section 28 [40-3661], the commissioner finds:

(a) That any rate, rating plan or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

(b) That an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans or rating systems, he may issue an order to such insurer, organization, group or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter.

(c) That the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing.

(d) That any rating organization has willfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization, in addition to any other penalty provided in this chapter.

History: En. Sec. 29, Ch. 362, L. 1969.

40-3663. Failure to comply with order—suspension or revocation of license or certificate. In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to section 29 [40-3662] and effective pursuant to section 31 [40-3664].

History: En. Sec. 30, Ch. 362, L. 1969.

40-3664. Appeals from the commissioner. Any person, insurer or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal therefrom to the district court of the county where the aggrieved party may reside, or has his principal place of business in this state, or to the district court of Lewis and Clark county, Montana. The appeal shall be taken within thirty (30) days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within twenty (20) days after filing of the notice, make and return to the district court a full and complete certified transcript of

the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal. Upon filing of the certified transcript, all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript, unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review, the order of the commissioner shall be suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review shall be refunded to the persons entitled thereto.

History: En. Sec. 31, Ch. 362, L. 1969.

40-3665. Information not to be willfully withheld. (a) No person, insurer or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner or to any rating organization, advisory organization, insurer or group, association or other organization of insurers, which will affect the rates, rating systems or premiums for the classes of insurance to which the provisions of this chapter are applicable.

(b) Any person, insurer, organization, group or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding fifty dollars (\$50), but if such failure be willful, he or it shall be liable to the state in an amount not exceeding five thousand dollars (\$5,000) for such failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the state of Montana to enforce collection. Such penalties may be in addition to any other penalties provided by law.

(c) A willful violation of the provisions of this chapter by any person is a **misdemeanor**.

History: En. Sec. 32, Ch. 362, L. 1969.

40-3666. Payment of dividends, etc., not prohibited or regulated—plan for payment not rating system. Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed a rating plan or system.

History: En. Sec. 33, Ch. 362, L. 1969.

40-3667. Acts, etc., done by authority of chapter not violation of other laws. No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this

state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 34, Ch. 362, L. 1969.

40-3668. Administration or enforcement of chapter—supplementation or modification. The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provision expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

History: En. Sec. 35, Ch. 362, L. 1969.

40-3669. Recording and reporting of loss and expense experience.

(a) The commissioner shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each insurer in the recording and reporting of its loss and country-wide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rates comply with the applicable standards of this act. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of country-wide expense experience.

(b) In promulgating such rules and plans the commissioner shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(c) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

History: En. Sec. 36, Ch. 362, L. 1969.

Repealing Clause

Section 37 of Ch. 362, Laws 1969 read
"Sections 40-3601 through 40-3633, R. C.
M. 1947, are hereby repealed."

CHAPTER 37—THE INSURANCE CONTRACT

- Section 40-3729. Assignment of policies.
40-3738. Continuation of coverage for handicapped—individual contracts.
40-3739. Continuation of coverage for handicapped—group contracts.
40-3740. Equal application notwithstanding contrary exemption or law.

40-3713. Representations in applications.**Misstatements Material to Acceptance**

Where application for automobile insurance contained nonfraudulent misstatements as to driving history on one insured which were material to acceptance of risk and hazard assumed by plaintiff, and insurer's agent received both letter from insurer rejecting application and notice of accident involving automobile to be insured on same day, insurer was not liable. *American Indemnity Co. v. Elspuru*, 302 FSupp 878.

Waiver of Misrepresentation

Motorist injured by negligence of insured was entitled to recover under insured's policy, even though insurance company was entitled to rescind policy for violation of this statute since insurance policy was effective until rescinded and since subsequent to discovering insured's fraud, insurance company acted affirmatively in accepting premium payments and paying other claims arising out of same accident all of which constituted implied waiver of right to rescind. *McLane v. Farmers Ins. Exchange*, 150 M 116, 432 P 2d 98.

40-3725. Construction of policies.**Construction against Insurer**

A policy of insurance must be liberally construed in favor of the insured, and strictly construed against the insurer. *Insurance Co. of North America v. Butte Aero Sales & Service*, 243 F Supp 276.

Endorsement on insurance policy limiting aircraft insurance to named person and anyone else having certain number of hours of flying time and proper certification was construed against the insurer to mean that the named insured was at all times covered while others who flew the craft had to be certified also in order to be covered by the policy. *Insurance Co. of North America v. Butte Aero Sales & Service*, 243 F Supp 276.

Crop Insurance

Crop-hail insurance policy, which required information pertaining to acreage

of crop prior to issuance, should be strictly construed against the insurer in determining that value of crop damage was based on percentage of area destroyed rather than on estimated crop value, since policy form was provided by the company. *Billmeyer v. Farmers Union Property & Casualty Co.*, 146 M 38, 404 P 2d 322, 20 ALR 3d 916.

Where the basis for recovery under a crop-hail insurance policy was on the acreage insured, stipulation that amount payable should not exceed the "actual loss or damage," read in light of the entire policy, pertained to loss or damage representing the percentage of injury to the crop, and not the value of the crop. *Billmeyer v. Farmers Union Property & Casualty Co.*, 146 M 38, 404 P 2d 322, 20 ALR 3d 916.

40-3729. Assignment of policies. A policy, or group certificate issued thereunder, may be assignable or not assignable, as provided by its terms. Subject to its terms relating to the assignability, any life or disability policy, or group certificate under either, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner, alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. An assignment valid hereunder may transfer to the assignee all the rights, privileges, and incidents of ownership of the assignor in the policy or group certificate, including, but not limited to the rights to designate beneficiaries and of a group certificate holder to have an individual policy issued in accordance with sections 40-3918 and 40-3919. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf

of some other person claiming some interest in the policy in conflict with the assignment; provided, however, that the insurer shall not be prejudiced by any payment made or action taken inconsistent with the terms of any assignment before the insurer has received and had reasonable time to act on written notice of such assignment. This section acknowledges, declares and codifies the existing right of assignment of interests under insurance policies. An assignment otherwise valid shall not be invalid because it was made prior to the effective date of this section.

History: En. Sec. 286, Ch. 286, L. 1959; amd. Sec. 1, Ch. 167, L. 1971.

Amendments

The 1971 amendment inserted references to group certificates in the first and

second sentences; inserted "or owner" following "insured" in two places in the second sentence; inserted the third sentence; added the proviso to the fourth sentence; and added the final two sentences.

40-3738. Continuation of coverage for handicapped—individual contracts. An individual hospital or medical expense insurance policy, or hospital or medical service plan contract, delivered or issued for delivery in this state more than one hundred twenty (120) days after the effective date of this act, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (b) chiefly dependent upon the policyholder or subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation by the policyholder or subscriber within thirty-one (31) days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

History: En. 40-3738 by Sec. 1, Ch. 298, L. 1971.

Title of Act

An act to provide for the continuation of coverage under individual and group

health insurance and hospital and medical service plan contracts for mentally retarded or physically handicapped dependent children; amending chapter 37, Title 40, R. C. M. 1947.

40-3739. Continuation of coverage for handicapped—group contracts. A group hospital or medical expense insurance policy, or hospital or medical service plan contract, delivered or issued for delivery in this state more than one hundred twenty (120) days after the effective date of this act, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (b) chiefly dependent upon the employee or member for support and maintenance, provided

proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation, by the employee or member within thirty-one (31) days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

History: En. 40-3739 by Sec. 1, Ch. 298, L. 1971.

40-3740. Equal application notwithstanding contrary exemption or law. The provisions of this act shall have equal application to hospital or medical expense insurance policies, and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: En. Sec. 2, Ch. 298, L. 1971.

CHAPTER 38—LIFE INSURANCE AND ANNUITIES

Section 40-3802. "Industrial life insurance" defined.

40-3831. Standard nonforfeiture law—life insurance.

40-3802. "Industrial life insurance" defined. For the purposes of this code "industrial life insurance" is that form of life insurance written under policies of face amount of two thousand dollars (\$2,000) or less bearing the words "industrial policy" imprinted on the face thereof as part of the descriptive matter, and under which premiums are payable monthly or more often.

History: En. Sec. 296, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 30, L. 1969.

Amendments

The 1969 amendment raised the limit for policies from \$1,000 to \$2,000.

40-3831. Standard nonforfeiture law—life insurance. (1) to (3).
* * * [Same as parent volume.]

(4) **Cash surrender value—life:** Any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by subsection (2) of this section, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions if there had been no default, over the sum of:

(a) The then present value of the adjusted premiums as defined in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section, corresponding to premiums which would have fallen due on and after such anniversary, and

(b). * * * [Same as parent volume.]

(5) to (7). * * * [Same as parent volume.]

(7-a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be

equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in subsections (6) and (7) except that, for the purposes of (b), (c), and (d) of subsection (6), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

(8) Except as otherwise provided in subsections (8-a) and (8-b), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent ($3\frac{1}{2}\%$) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty per cent (130%) of the rates of mortality according to such applicable table, provided further that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(8-a). * * * [Same as parent volume.]

(8-b) In the case of industrial policies issued on or after the operative date of this subsection (8-b) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of commissioners 1961 standard industrial mortality table and the rate of interest, not exceeding three and one-half per cent ($3\frac{1}{2}\%$) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table. Provided, further, that for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-b), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-eight.

(9) Calculation of values—life: Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (4), (5), (6), (7), (7-a), (8), (8-a) and (8-b) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (4) of this section, additional benefits payable:

(a) In the event of death or dismemberment by accident or accidental means,

(b) In the event of total and permanent disability,

(c) As reversionary annuity or deferred reversionary annuity benefits,

(d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply,

(e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and

(f) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits,

Shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(10) Exceptions. This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen (15) years or less expiring before age 66 for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section is less than the adjusted premiums so calculated on a policy issued at the same age and for the same initial amount of insurance for a term

defined as follows: For ages at issue fifty (50) and under, the term shall be fifteen (15) years; thereafter, the term shall decrease one (1) year for each year of age beyond fifty (50).

(11). * * * [Same as parent volume.]

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965.

and (10); and made minor changes in punctuation in subsections (7-a) and (8).

Amendment

The 1965 amendment inserted subsection (8-b); inserted references to subsection (8-b) in subsections (4) (a), (8), (9),

Effective Date

Section 2 of Ch. 42, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

CHAPTER 39—GROUP LIFE INSURANCE

Section 40-3905.1. State employee groups.
40-3906. Debtor groups.

40-3905.1. State employee groups. All departments, bureaus, boards, commissions and agencies of the state of Montana are hereby authorized upon approval by a two-thirds ($\frac{2}{3}$) vote of the officers and employees of such departments, bureaus, boards, commissions and agencies to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents. The premiums required from time to time to maintain such insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct said premiums from the salary or wages of each officer or employee who elects to become insured, on the officer or employee's written order, and issue his warrant therefor to the insurer. For the purpose of this act, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanitariums, or both professional and hospital services, shall be construed as group insurance, and the dues payable under such plans shall be construed as premiums therefor.

History: En. Sec. 1, Ch. 248, L. 1963.

Effective Date

Section 2 of Ch. 248, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Title of Act

An act relating to group life and health insurance for state officers and employees and providing for payroll deductions.

40-3906. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) to (3). * * * [Same as parent volume.]

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life

of any debtor shall in no instance be in effect for a period in excess of five years, except that such insurance may be continued for an additional period not exceeding six months in the case of default, extension or recasting of the loan.

(5). * * * [Same as parent volume.]

History: En. Sec. 333, Ch. 286, L. 1959; amd. Sec. 1, Ch. 132, L. 1965.

years" for "eighteen months" in the second sentence of subsection (4).

Amendment

The 1965 amendment deleted "or ten thousand dollars (\$10,000), whichever is less" at the end of the first sentence of subsection (4); and substituted "five

Repealing Clause

Section 2 of Ch. 132, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 40—DISABILITY INSURANCE POLICIES

40-4011. Time of payment of claims.

Criminal Penalty

Separate penalty provided in section 40-2617 is applicable to violation of this section requiring prompt payment of claims. State ex rel. Larson v. District Court, Eighth Judicial District, 149 M 131, 423 P 2d 598.

Exemplary Damages

Insured was entitled to actual damages for default on policy requiring insurer to pay car installments upon insured's disability as well as to exemplary damages for default as being in violation of statute requiring prompt payment of claim. State ex rel. Larson v. District Court, Eighth Judicial District, 149 M 131, 423 P 2d 598.

40-4034. Violations.

Prompt Payment of Claims

Separate penalty provided in section 40-2617 is applicable to violation of section 40-4011 requiring prompt payment of

claims. State ex rel. Larson v. District Court, Eighth Judicial District, 149 M 131, 423 P 2d 598.

CHAPTER 41—GROUP AND BLANKET DISABILITY INSURANCE

Section 40-4108. Policies to provide for freedom of choice of practitioners.

40-4109. Scope of professional practice not enlarged—hospitals.

40-4108. Policies to provide for freedom of choice of practitioners. All policies of disability insurance, including individual, group and blanket policies, and all policies insuring the payment of compensation under the Workmen's Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist, chiropodist or clinical psychologist for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

History: En. Sec. 1, Ch. 172, L. 1967; amd. Sec. 1, Ch. 402, L. 1971.

and workmen's compensation policies to provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiroprac-

Title of Act

An act requiring disability insurance

tor, optometrist or chiroprapist for treatment of illness or injury; providing a like freedom of choice in the selection of pharmacists; providing an effective date; and containing a repealing clause.

Amendments

The 1971 amendment inserted "or clinical psychologist."

40-4109. Scope of professional practice not enlarged—hospitals. Nothing in this act shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in section 1 [40-4108]; nor shall this act be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.

History: En. Sec. 2, Ch. 172, L. 1967.

Effective Date

Section 3 of Ch. 172, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 27, 1967.

Repealing Clause

Section 4 of Ch. 172, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 42—CREDIT LIFE AND DISABILITY INSURANCE

Section 40-4203. Scope of chapter.

40-4211. Premiums and refunds.

40-4203. Scope of chapter. All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except such insurance sold in connection with a loan or other credit transaction of more than ten (10) years duration.

History: En. Sec. 394, Ch. 286, L. 1959; amd. Sec. 1, Ch. 31, L. 1969.

Amendments

The 1969 amendment increased the time period of exempt transactions from five years to ten years.

40-4211. Premiums and refunds. (1) to (3). * * * [Same as parent volume.]

(4) The amount charged to a debtor for any credit life or credit disability insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

History: En. Sec. 402, Ch. 286, L. 1959; amd. Sec. 1, Ch. 113, L. 1967.

Amendments

The 1967 amendment added subsection (4) to this section.

CHAPTER 43—PROPERTY INSURANCE CONTRACTS

40-4301. Measure of the indemnity.

References

Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322.

40-4302. Valued policy law.

Improvement on Real Property

Mobile home that rested on permanent foundation with its wheels removed, had

two additional rooms bolted to it and was connected with sewer line was an "improvement on real property" as used in

this section. *Meccage v. Spartan Ins. Co.*, — M —, 477 P 2d 115.

Partial Payment

Where valued policy fixed valuation of mobile home at \$3,000, insured who signed proof of loss calling for payment of \$1,500 by the insurer and subsequently accepted check in that amount was not barred from claiming additional \$1,500 since claim was a liquidated demand that was not settled by partial payment. *Meccage v. Spartan Ins. Co.*, — M —, 477 P 2d 115.

Total Loss

Mobile home was wholly destroyed under this section even though some articles were salvaged and frame could be used as farm or ranch trailer, since mobile home's identity and specific character were lost. *Meccage v. Spartan Ins. Co.*, — M —, 477 P 2d 115.

References

Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322.

CHAPTER 44—CASUALTY INSURANCE CONTRACTS

- Section 40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits.
- 40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured.
- 40-4404. Reimbursement for total loss of motor vehicle based on actual replacement value.
- 40-4405. Notice required for cancellation of auto liability insurance.
- 40-4406. Notice to insured of ground for cancellation—commissioner to ensure compliance.
- 40-4407. Reasons for cancellation.
- 40-4408. Notice of cancellation to be mailed 30 days in advance—exception—statement that insurer will specify reason upon request.
- 40-4409. Advance notice required for nonrenewal—exceptions—exemptions.
- 40-4410. Proof of notice.
- 40-4411. Penalty for violation.
- 40-4412. No liability for statements in connection with cancellation or nonrenewal.
- 40-4413. Cancellation or increase of premium rates of professional liability insurance by reason of unfounded claims prohibited.
- 40-4414. Cancellation or increase of premium rates of professional liability insurance—60 days' written notice required.
- 40-4415. Written notice required for cancellation or nonrenewal of fire insurance policies.
- 40-4416. Penalty for cancellation or nonrenewal of fire insurance policies without required notice.

40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits. Whenever an insurer accepts any premium, money or other consideration from a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity for casualty or liability insurance, neither such insured nor insurer shall raise the defense of sovereign or governmental immunity in any damage action brought against such insured or insurer, and any agreement in the insurance contract permitting the defense of sovereign or governmental immunity is hereby declared void. No attempt shall be made in the trial of an action brought against such political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity, to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff. If the court shall determine that the defendant could have

successfully raised the defense of sovereign or governmental immunity, and if the verdict exceeds the limits of the applicable insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy.

History: En. Sec. 1, Ch. 240, L. 1963.

Title of Act

An act prohibiting the defense of sovereign immunity where public bodies are insured; prohibiting the suggestion of insurance coverage in actions against public bodies, and providing for the reduction of awards to policy limits where

sovereign immunity defense could have been successfully raised; repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 240, Laws 1963 repealed all acts and parts of acts in conflict therewith.

40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured. No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 53-422, under provisions filed with and approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that the named insured shall have the right to reject such coverage; and, provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer.

History: En. Sec. 1, Ch. 31, L. 1967.

Title of Act

An act relating to automobile liability insurance policies; requiring such policies to contain uninsured motorist provision; permitting rejection of such coverage at

the option of the insured; providing for an effective date.

Effective Date

Section 2 of Ch. 31, Laws 1967 read "This act is effective January 1, 1968."

40-4404. Reimbursement for total loss of motor vehicle based on actual replacement value. Each automobile insurance policy issued to residents of this state which provides that reimbursement for total loss of a motor vehicle shall be based on a "book" value rather than on the actual replacement value is void as to such provision and reimbursement shall be made for actual replacement value.

History: En. Sec. 1, Ch. 182, L. 1969.

Title of Act

An act to provide that motor vehicle

insurance must provide that reimbursement for a total loss of the vehicle be based on the actual replacement value of the vehicle and not on a book value.

40-4405. Notice required for cancellation of auto liability insurance. Notwithstanding any other provision of this code, no cancellation by an

insurer of an auto liability insurance policy shall be effective prior to the mailing or delivery to the named insured at the address shown in the policy, of a written notice of the cancellation stating when, not less than thirty (30) days after the date of such mailing or delivery, the date the cancellation shall become effective.

History: En. Sec. 1, Ch. 262, L. 1971.

Title of Act

An act to establish a law concerning cancellation of automobile liability insurance policies.

40-4406. Notice to insured of ground for cancellation—commissioner to ensure compliance. Whenever an insurer gives notice of cancellation of an automobile liability policy, upon request of the insured, the insurer, within fifteen (15) days of receipt of the request, shall furnish to the insured a statement setting forth the ground or grounds upon which the notice of cancellation is based. If the insurer fails to comply with the provisions of this section, the insured may apply to the commissioner for a certificate of the facts or information desired. The commissioner shall exercise any power conferred upon him by law as may be necessary to ensure compliance with this section.

History: En. Sec. 2, Ch. 262, L. 1971.

40-4407. Reasons for cancellation. (1) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(a) Nonpayment of premium; or

(b) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date.

(2) This section shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(3) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars (\$100) shall not be deemed a cancellation of the coverage or of the policy.

(4) This section shall not apply to nonrenewal.

History: En. Sec. 3, Ch. 262, L. 1971.

40-4408. Notice of cancellation to be mailed 30 days in advance—exception—statement that insurer will specify reason upon request. No notice of cancellation of a policy to which section 3 [40-4407] applies shall be effective unless mailed or delivered by the insurer to the named insured at least thirty (30) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least ten (10) days' notice of cancellation accompanied by the reason

therefor shall be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than fifteen (15) days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

This section shall not apply to nonrenewal.

History: En. Sec. 4, Ch. 262, L. 1971.

40-4409. Advance notice required for nonrenewal—exceptions—exemptions. No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least thirty (30) days' advance notice of its intention not to renew. Such notice shall contain or be accompanied by a statement that upon written request made not later than one (1) month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within fifteen (15) days of his request, the reason or reasons for such nonrenewal; provided, however, that notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other replacement or succeeding automobile liability insurance policy procured by the insured, with respect to any automobile designated in both policies. This section shall not apply where the named insured has failed to discharge when due any of his obligations in connection with the payment of premiums for the policy, or the renewal thereof, or any installment payments therefor, whether payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit. This section shall not apply in any of the following cases:

(a) If the insurer has manifested its willingness to renew.

(b) In case of nonpayment of premium; provided that, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

(c) If the insured's agent or broker has secured other coverage acceptable to the insured at least twenty (20) days prior to the anniversary date of the policy or termination of the policy period.

Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

History: En. Sec. 5, Ch. 262, L. 1971.

40-4410. Proof of notice. Proof of mailing of notice of cancellation, or of intention not to renew or of reasons for cancellation, to the named insured at the address shown in the policy or to the named insured's latest known address, shall be sufficient proof of notice.

History: En. Sec. 6, Ch. 262, L. 1971.

40-4411. Penalty for violation. Any insurer willfully violating any provisions of section 4 [40-4408] is guilty of a misdemeanor and is punishable by a fine of not exceeding five hundred dollars (\$500) for each violation thereof.

History: En. Sec. 7, Ch. 262, L. 1971.

40-4412. No liability for statements in connection with cancellation or nonrenewal. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner or against any insurer, its authorized representative, its agents, its employees or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or for statements made or evidence submitted at any hearings conducted in connection therewith.

History: En. Sec. 8, Ch. 262, L. 1971.

40-4413. Cancellation or increase of premium rates of professional liability insurance by reason of unfounded claims prohibited. Whenever an action for damages is filed against, or a claim or demand for damages is made to an insurer of, a physician and surgeon, dentist, registered nurse, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, pharmacist, optometrist or veterinarian, duly licensed as such under the laws of this state, or against a licensed hospital as the employer of any such person, in an action, claim or demand for error, omission, professional negligence, or performance of services without consent, and such action, claim or demand is later determined to be unfounded and no payment is made by the insurer to the claimant on behalf of such licensee or licensed hospital or is finally determined to establish nonliability to plaintiff by such licensee or licensed hospital, the fact of such litigation, claim or demand shall not be a ground for cancellation nor for any increase in insurance premium rates of the professional liability insurance during the term of the policy.

History: En. Sec. 1, Ch. 210, L. 1971.

Title of Act

An act to prohibit insurers from cancelling a professional liability insurance

policy or increasing the premium rates thereon because of claims, demands or lawsuits that are determined to be unfounded or where nonliability is established.

40-4414. Cancellation or increase of premium rates of professional liability insurance—60 days' written notice required. Any insurer who insures a physician and surgeon, dentist, registered nurse, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed as such under the laws of this state, or a licensed hospital as the employer of any such person against liability for error, omission, professional negligence, or performance of services without consent, shall not cancel the policy so insuring such person or increase the premium rates thereon without first

providing the insured sixty (60) days written notice of the insurer's intention to cancel the policy or increase the premium rates.

History: En. Sec. 1, Ch. 14, L. 1971.

Title of Act

An act to prohibit insurers from canceling a professional liability insurance

policy or increasing the premium rates thereon without first providing the insured sixty (60) days notice in writing prior to such cancellation or increase in premium rate.

40-4415. Written notice required for cancellation or nonrenewal of fire insurance policies. No insurer shall cancel or refuse to renew any policy providing fire coverage on any home occupied by the insured as a domicile without first giving to the insured thirty (30) days' notice in writing.

History: En. Sec. 1, Ch. 374, L. 1971.

Title of Act

An act to require thirty day notice of cancellation or nonrenewal of fire insur-

ance policies and providing a penalty for violation under section 40-2617, R. C. M., 1947.

40-4416. Penalty for cancellation or nonrenewal of fire insurance policies without required notice. Violation of this section is punishable under section 40-2617, R. C. M., 1947 (general penalty).

History: En. Sec. 2, Ch. 374, L. 1971.

CHAPTER 47—ORGANIZATION AND CORPORATE PROCEDURES OF STOCK AND MUTUAL INSURERS

- Section 40-4705. Incorporation.
 40-4745. Mergers and consolidations of stock insurers.
 40-4751. Equity securities of domestic stock insurance company—statement of ownership.
 40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover.
 40-4753. Short sales of equity securities prohibited—time for delivery after sale.
 40-4754. Exemptions—securities held in an investment account—primary or secondary market.
 40-4755. Exemptions—arbitrage transactions.
 40-4756. "Equity security" defined.
 40-4757. Exemptions—registered securities—holding by less than one hundred persons.
 40-4758. Rules and regulations of commissioner—classifications—effect.

40-4705. Incorporation. (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Incorporators. Five (5) or more individuals, none of whom are less than eighteen (18) years of age, may incorporate a stock insurer; ten (10) or more of such individuals may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States. At least a majority of the incorporators shall be residents of this state.

(3) Articles of incorporation. The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state the purpose for which the corporation is formed and shall show:

(a) to (c) * * * [Same as parent volume.]

(d) If a stock corporation, its authorized capital stock, the number of shares of common stock into which divided, the par value of each such share, which par value shall be at least one dollar (\$1). Shares without par value, or other than one (1) class of voting common stock, shall not be authorized. The articles of incorporation may limit or deny present or future stockholders pre-emptive or preferential rights to acquire additional issues of the stock, or bonds, debentures or other obligations convertible into stock, of the corporation, subject to the constitution and laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes or consent proceedings.

(e) to (k) * * * [Same as parent volume.]

History: En. Sec. 422, Ch. 286, L. 1959;
amd. Sec. 7, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in the first sentence of subsection (2) from 21 to 18 years.

40-4743. Mutualization of stock insurers.

Compiler's Notes

Section 15-1905, referred to in subd. (e) of subsection (2) of this section in the

parent volume, was repealed by Sec. 143, Ch. 300, Laws 1967.

40-4745. Mergers and consolidations of stock insurers. (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock corporations authorized to transact business in this state and by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit, but subject to subsections (2) and (3) below.

(2) to (6) * * * [Same as parent volume.]

History: En. Sec. 462, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 151, L. 1971.

minor changes in phraseology and punctuation.

Amendments

The 1971 amendment substituted "corporations authorized to transact business" for "insurers authorized to transact insurance" in subsection (1); and made

Effective Date

Section 2 of Ch. 151, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

40-4751. Equity securities of domestic stock insurance company—statement of ownership. Every person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file with the commissioner of insurance within ten (10) days after he becomes such beneficial owner, director or officer, a statement in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter. If there has been a change in

such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

History: En. Sec. 1, Ch. 159, L. 1965. domestic stock insurance company equity securities.

Title of Act

An act relating to insider trading of

40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

History: En. Sec. 2, Ch. 159, L. 1965.

40-4753. Short sales of equity securities prohibited—time for delivery after sale. It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

History: En. Sec. 3, Ch. 159, L. 1965.

40-4754. Exemptions—securities held in an investment account—primary or secondary market. The provisions of section 2 [40-4752] of this

act shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 3 [40-4753] of this act shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a broker-dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

History: En. Sec. 4, Ch. 159, L. 1965.

40-4755. Exemptions—arbitrage transactions. The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of this act.

History: En. Sec. 5, Ch. 159, L. 1965.

40-4756. "Equity security" defined. The term "equity security" when used in this act means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security. *Added by En. Sec. 6, Ch. 159, L. 1965.*

History: En. Sec. 6, Ch. 159, L. 1965.

40-4757. Exemptions—registered securities—holding by less than one hundred persons. The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to equity securities of a domestic stock insurance company if (a) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (b) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act except for the provisions of this subsection (b).

History: En. Sec. 7, Ch. 159, L. 1965.

40-4758. Rules and regulations of commissioner—classifications—effect. The commissioner may make such rules and regulations as may be necessary for the execution of the functions vested in him by sections 1 through 7 [40-4751 to 40-4757] of this act, and may for such purpose

classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: En. Sec. 8, Ch. 159, L. 1965.

CHAPTER 48—FARM MUTUAL INSURERS

Section 40-4804. Limit of risk.

40-4807. Who may form a farm mutual insurer.

40-4801. Scope of chapter—provisions exclusive.

Compiler's Notes

Sections 40-1501 to 40-1517 and 40-1601 to 40-1625, referred to in subdivisions (1)

(a) and (1)(b) of this section in the parent volume, were repealed by Sec. 673, Ch. 286, Laws 1959.

40-4804. Limit of risk. (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed ten per cent (10%) of the admitted assets of the insurer or fifteen thousand dollars (\$15,000), whichever is the larger amount.

(2). * * * [Same as parent volume.]

History: En. Sec. 471, Ch. 286, L. 1959; amd. Sec. 1, Ch. 259, L. 1967.

Amendments

The 1967 amendment substituted "fifteen thousand dollars (\$15,000)" for "five thousand dollars" in subsection (1).

40-4807. Who may form a farm mutual insurer. (1) One hundred (100) or more individuals residing in this state, each of whom is eighteen (18) years of age or more, who collectively own farm property as referred to in section 40-4803 (1) (a) of this chapter valued at not less than five hundred thousand dollars (\$500,000) which they desire to insure, and each of whom owns farm lands or ranch lands situated in this state valued at not less than five thousand dollars (\$5,000), may incorporate a state mutual insurer.

(2) Twenty-five (25) or more individuals residing in this state, each of whom is eighteen (18) years or more of age, each of whom owns farm land or ranch land valued at five thousand dollars (\$5,000) or more in the county wherein is to be located the principal office of the proposed insurer, or in any county in this state contiguous with such county, and who collectively own in such counties farm property referred to in section 40-4803 (1) (a) of this chapter valued at not less than one hundred twenty-five thousand dollars (\$125,000) which they desire to insure, may incorporate a county mutual insurer.

History: En. Sec. 474, Ch. 286, L. 1959; amd. Sec. 8, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the minimum age specified in each of the two subsections from 21 to 18 years.

CHAPTER 49—BENEVOLENT ASSOCIATIONS

Section 40-4917. Other provisions applicable.
 40-4918. Annual license.

40-4917. Other provisions applicable. In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to benevolent associations, to the extent applicable, as follows:

(1) Chapter 26 (scope of code).

(2) Chapter 27 (the commissioner of insurance), except section 40-2726 fees and licenses.

(3) to (9) * * * [Same as parent volume.]

History: En. Sec. 537, Ch. 286, L. 1959;
 amd. Ses. 1, Ch. 297, L. 1971.

Amendments

The 1971 amendment added the exception to subdivision (2).

40-4918. Annual license. Associations which are now authorized to transact business in this state may continue such business until the first day of June next succeeding the effective date of this section. The authority of such association may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding June. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the association shall pay the commissioner twenty-five dollars (\$25). A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a benevolent association within the meaning of this chapter.

History: En. 40-4918 by Sec. 2, Ch. 297,
 L. 1971.

an annual license for benevolent associations and providing an effective date.

Title of Act

An act to amend section 40-4917, R. C. M. 1947, exempting benevolent associations from licenses and fees and to add a new section numbered 40-4918 requiring

Effective Date

Section 3 of Ch. 297, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

CHAPTER 51—REHABILITATION AND LIQUIDATION

40-5101. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Insurers Liquidation Act: Alaska, Arkansas, Florida, and West Virginia.

CHAPTER 53—FRATERNAL BENEFIT SOCIETIES

Section 40-5321. Qualifications for membership.

40-5321. Qualifications for membership. A society may admit to benefit membership any person not less than fifteen (15) years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society. Any such member who shall apply for additional benefits more than six (6) months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society.

Any person admitted prior to attaining the full age of eighteen (18) years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application. A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs.

History: En. Sec. 634, Ch. 286, L. 1959; Amendments
amd. Sec. 9, Ch. 423, L. 1971.

The 1971 amendment reduced the age specified near the beginning of the second paragraph from 21 to 18 years.

CHAPTER 54—EXTENDED HEALTH INSURANCE FOR OLDER PERSONS

- Section 40-5401. Purpose of act.
40-5402. Definition of terms.
40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage.
40-5404. Agents authorized to write coverage.
40-5405. Corporate powers of association—examination of books.
40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association.
40-5407. Filing with commissioner by association—deceptive practices prohibited.
40-5408. Exemption of association from other laws.

40-5401. Purpose of act. It is the purpose of this act to provide a means of more adequately meeting the needs of persons who are 65 years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945 (Public Law 15, 79th Congress), as amended.

History: En. Sec. 1, Ch. 61, L. 1965.

Title of Act

An act relating to group accident and sickness insurance for persons 65 years of

age or older, and their spouses; providing regulation of such insurance by the commissioner of insurance; and providing an effective date.

40-5402. Definition of terms. Wherever used in this act, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(a) "Association" means a voluntary unincorporated association formed for the purpose of enabling co-operative action to provide disability insurance in accordance with this act in this or any other state having legislation enabling the issuance of insurance of the type provided in this act.

(b) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(c) "Extended health insurance" means hospital, surgical and medical expense insurance provided by a policy issued as provided by this act.

History: En. Sec. 2, Ch. 61, L. 1965.

40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is 65 years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than 100 per cent of covered expenses which he is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical benefits to persons 65 years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurance described in this act shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Montana to all persons 65 and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled.

History: En. Sec. 3, Ch. 61, L. 1965.

40-5404. Agents authorized to write coverage. Notwithstanding the provisions of section 40-3316, any person licensed to transact disability insurance as an insurance agent, may transact extended health insurance and may be paid a commission thereon.

History: En. Sec. 4, Ch. 61, L. 1965.

40-5405. Corporate powers of association—examination of books. Any association formed for the purposes of this act, may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association, made upon a managing agent, any member thereof or any agent authorized by appointment to receive service of

process, shall have the same force and effect as if such service had been made upon all members of the association. Such association's books and records shall also be subject to examination under the provisions of sections 40-2713 to 40-2719, inclusive, either separately or concurrently with examination of any of its member insurers.

History: En. Sec. 5, Ch. 61, L. 1965.

40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association. The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, certificate or other evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or 30 days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms for such insurance if he finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumptions excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him by this act, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than 90 days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Montana, the extended health insurance benefits provided by policies issued under this act shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under

this act and the calendar year experience applicable to such insurance offered under this act, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report.

History: En. Sec. 6, Ch. 61, L. 1965.

40-5407. Filing with commissioner by association—deceptive practices prohibited. The articles of association of any association formed in accordance with this act, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued, pursuant to this act shall not be such as to mislead or deceive the public.

History: En. Sec. 7, Ch. 61, L. 1965.

40-5408. Exemption of association from other laws. No act done, action taken or agreement made pursuant to the authority conferred by this act shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 8, Ch. 61, L. 1965.

Effective Date

Section 9 of Ch. 61, Laws 1965 pro-

vided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

CHAPTER 55—INSURANCE HOLDING COMPANIES

- Section 40-5501. Short title.
 40-5502. General definitions.
 40-5503. Restrictions on transfers of stock.
 40-5504. Exemptions from prohibitions on stock transfers.
 40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports.
 40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition.
 40-5507. Violations of act—penalty.
 40-5508. Filing of false information—penalty.
 40-5509. Definitions.
 40-5510. Subsidiaries of insurers.
 40-5511. Acquisition of control of or merger with domestic insurer.
 40-5512. Registration of insurers.
 40-5513. Standards.
 40-5514. Examination.
 40-5515. Confidential treatment.
 40-5516. Rules and regulations.
 40-5517. Injunctions—prohibitions against voting securities—sequestration of voting securities.
 40-5518. Criminal proceedings.

- 40-5519. Receivership.
- 40-5520. Revocation, suspension, or nonrenewal of insurer's license.
- 40-5521. Judicial review—mandamus.
- 40-5522. Conflict with other laws.

40-5501. Short title. This act may be cited as the "Montana Insurance Holding Act."

History: En. Sec. 1, Ch. 269, L. 1967.

Compiler's Notes

The title of Chapter 64, Laws of 1971, referred to a repealer of sections 40-5501 to 40-5508. However, no repealer was contained in the body of the act.

Title of Act

An act to provide for control and regulation of the affairs of domestic and foreign insurance holding companies; prescribe rules and regulations governing acquisition and disposal of stock of insur-

ance holding companies; prescribe rules and regulations regarding acquisition and disposal of stock of insurance companies by insurance holding companies; exempting certain acquisitions and disposals of stock from the provisions of the act; subjecting domestic insurers coming within the purview of the act to examination by the insurance department; providing for application to be made to the insurance commissioner to approve certain transactions; providing for judicial review of orders; defining terms; and providing penalties.

40-5502. General definitions. Unless context requires otherwise, in this act:

(1) "Commissioner" means commissioner of insurance of the state of Montana.

(2) "Department" means the department of insurance of the state of Montana.

(3) "Company" means all corporations, joint stock companies, trusts, associations, partnerships, or individuals engaged in the business of insurance as principals.

(4) "Insurance Holding Company" means any company:

(a) which directly or indirectly owns, controls or holds with power to vote fifteen per cent (15%) or more of the voting stock of one or more insurance companies; or

(b) which controls the election of the directors of one or more insurance companies; or

(c) for the benefit of whose stockholders or members, fifteen per cent (15%) or more of the voting stock of one or more insurance companies is held by one or more trustees; and for the purposes of this section, any successor to any company from the date as of which such predecessor company became an insurance holding company.

(5) "Affiliate" means:

(a) any company, fifteen per cent (15%) or more of whose voting stock is owned or controlled by an insurance holding company; or

(b) any company, the election of whose directors is controlled in any manner by an insurance holding company; or

(c) any company, fifteen per cent (15%) or more of whose vote or voting stock is held by trustees for the benefit of the stockholders or members of an insurance holding company.

(6) "Successor" means any company which acquired directly or indirectly from an insurance holding company stock of any insurance company when and if the relationship between such company and insurance holding company is such that the transaction effects no substan-

tial change in the control of the insurance company or beneficial ownership of the stock thereof. The commissioner may, by regulation, further define the word "successor" to the extent necessary to prevent evasion of the purposes of this section.

(7) "Domestic" insurer means one formed under the laws of this state.

(8) "Foreign" insurer means one formed under the laws of any jurisdiction other than this state.

History: En. Sec. 2, Ch. 269, L. 1967.

40-5503. Restrictions on transfers of stock. Except with prior written approval of the commissioner:

(1) No domestic insurance company shall directly or indirectly transfer fifteen per cent (15%) of its voting stock to a foreign or domestic insurance holding company.

(2) No domestic insurance holding company shall transfer, directly or indirectly, ownership or control of voting stock in any other company to a foreign insurance holding company if, after such acquisition, such foreign insurance holding company will own or control, directly or indirectly, fifteen per cent (15%) or more of the voting stock of the company whose shares it acquires.

(3) No domestic insurance holding company shall, directly or indirectly, transfer more than fifteen per cent (15%) of its authorized and outstanding voting stock to any other corporation, association, partnership or individual.

History: En. Sec. 3, Ch. 269, L. 1967.

40-5504. Exemptions from prohibitions on stock transfers. The prohibitions of section 3 [40-5503] shall not apply to:

(1) Stock held in a fiduciary capacity except where such stock is held for the benefit of the shareholders of an insurance company or insurance holding company;

(2) Stock accepted in good faith as collateral security by a company other than an insurance holding company for advances made or stock acquired in good faith; provided, such stock shall be sold or otherwise disposed of within two (2) years from the date of its acquisition unless its further holding is approved by the commissioner;

(3) Stock acquired as a consequence of a merger or consolidation of one insurance company with another, or the conversion of one insurance company into another, or the sale of assets of one insurance company to another where the stock acquired does not represent a larger percentage interest in the stock of the insurance company in which acquired than was held prior to such consolidation, merger, conversion, or sale by the insurance holding company in the insurance company consolidated, merged, or converted, or whose assets were the subject of the sale; or

(4) Any stock acquired in connection with the underwriting of the issue of such stock and which is held only for such period of time as will

permit the sale thereof on a reasonable basis as regulated by the Securities Act of Montana.

History: En. Sec. 4, Ch. 269, L. 1967.

40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports. Every domestic insurance company, fifteen per cent (15%) of whose stock is held by a domestic or foreign insurance holding company and every domestic insurance holding company as defined by this act, shall be subject to examination by the insurance department of the state of Montana as often as the commissioner deems advisable, but not less frequently than once each year; and shall submit to the commissioner an annual report on forms prescribed by the commissioner.

History: En. Sec. 5, Ch. 269, L. 1967.

40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition. Any company or insurance holding company desiring to acquire or transfer stock as regulated by section 3 [40-5503] shall submit a petition, in writing, to the commissioner seeking approval of such acquisition or transfer, on such forms as the commissioner may from time to time prescribe and with such information as the commissioner by rule or regulation shall require. Upon receipt of a petition, the commissioner shall grant approval or grant a hearing on the request. If, after such hearing it is decided by the commissioner that such transfer or acquisition is not in the best interest of the stockholders, or policyholders, or that competition among insurance companies will be unnecessarily affected, he shall deny such petition. Upon denial of any petition, the courts of the state of Montana, first judicial district, in and for Lewis and Clark county, shall have jurisdiction to hear an appeal from said denial. A trial de novo shall be granted upon such an appeal.

History: En. Sec. 6, Ch. 269, L. 1967.

40-5507. Violations of act—penalty. Any company which fails to comply with the provisions of this act shall be fined by the commissioner in an amount not to exceed one thousand dollars (\$1,000.00), and the certificate of authority of any domestic insurance company which fails to comply with the provisions of this act shall be revoked by the commissioner, after a hearing held for that purpose.

History: En. Sec. 7, Ch. 269, L. 1967.

40-5508. Filing of false information—penalty. Any individual who knowingly causes, directly or indirectly, false information to be filed with the commissioner contained in any report required under the provisions of this act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or both.

History: En. Sec. 8, Ch. 269, L. 1967.

40-5509. Definitions. As used in this article, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(a) **Affiliate.** An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) **Commissioner.** The term "commissioner" shall mean the insurance commissioner, his deputies, or the insurance department, as appropriate.

(c) **Control.** The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten per cent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 4 [40-5512] (i) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) **Insurance holding company system.** An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.

(e) **Insurer.** The term "insurer" shall have the same meaning as set forth in section 40-2603, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(f) **Person.** A "person" is an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(g) **Securityholder.** A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) **Subsidiary.** A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one (1) or more intermediaries.

(i) **Voting security.** The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

History: En. Sec. 1, Ch. 64, L. 1971.

Title of Act

An act to provide for control and regulation of the affairs of insurance holding companies; prescribe rules and regulations governing acquisition and disposal of insurance holding companies; subjecting do-

mestic insurers to examination by the insurance department; providing for application to be made to the insurance commissioner to approve certain transactions; providing for judicial review; defining terms; and providing penalties; repealing sections 40-5501 through 40-5508, R. C. M., 1947.

40-5510. Subsidiaries of insurers. (a) Authorization. Any domestic insurer, either by itself or in co-operation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries engaged in the following kinds of business:

(1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

(2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries.

(3) Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

(4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.

(5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended.

(6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups.

(7) Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services.

(8) Ownership and management of assets which the parent corporation could itself own or manage.

(9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function.

(10) Financing of insurance premiums, agents and other forms of consumer financing.

(11) Any other business activity determined by the commissioner to be reasonable ancillary to an insurance business.

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one (1) or more of the businesses specified in this section.

(b) Additional investment authority. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this chapter, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, amounts which do not exceed the lesser of five per cent (5%) of such insurer's assets or fifty

per cent (50%) of such insurer's surplus as regards policyholders, provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there shall be included total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

(2) If the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than ten per cent (10%) of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, provided that, after such investment, the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(3) Invest any amount in common stock, preferred stock, debt obligations and other securities of one (1) or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this clause, "the total investment of the insurer" shall include:

(i) Any direct investment by the insurer in an asset.

(ii) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

(4) With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiaries, provided that after such investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(5) Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property, if after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, and if following such investment all voting securities of such subsidiary would be owned by the insurer.

(c) Exemption from investment restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries

made pursuant to subsection (b) hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to such investments of insurers.

(d) Qualification of investment—when determined. Whether any investment pursuant to subsection (b) meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made.

(e) Cessation of control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of this chapter, and the insurer has notified the commissioner thereof.

History: En. Sec. 2, Ch. 64, L. 1971.

40-5511. Acquisition of control of or merger with domestic insurer.

(a) Filing requirements. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed. For purposes of this section, a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(b) Content of statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called "acquiring party").

(i) If such person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten years.

(ii) If such person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph (i) of this subsection.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection (a) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) during the twelve (12) calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two (2) business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(c) Alternative filing materials. If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(d) Approval by commissioner—hearings. (1) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, he finds that:

(i) After the change of control the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the is-

suance of a license to write the line or lines of insurance for which it is presently licensed.

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party.

(iv) The terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) are unfair and unreasonable to the securityholders of the insurer.

(v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(vi) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in clause (1) shall be held within thirty (30) days after the statement required by subsection (a) is filed, and at least twenty (20) days notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(e) Mailing to shareholders—payment of expenses. All statements, amendments, or other material filed pursuant to subsection (a) or (b), and all notices of public hearings held pursuant to subsection (d), shall be mailed by the insurer to its shareholders within five (5) business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(f) Exemptions. The provisions of this section shall not apply to:

(i) Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection (a) of any voting security referred to in subsection (a) which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding.

(ii) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (1) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (2) as otherwise not comprehended within the purposes of this section.

(g) Violations. The following shall be violations of this section:

(i) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a) or (b).

(ii) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(h) Jurisdiction—consent to service of process. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

History: En. Sec. 3, Ch. 64, L. 1971.

40-5512. Registration of insurers. (a) Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within sixty (60) days after the effective date of this article or fifteen (15) days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Information and form required. Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(i) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

(ii) The identity of every member of the insurance holding company system.

(iii) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(1) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(2) Purchases, sales, or exchanges of assets.

(3) Transactions not in the ordinary course of business.

(4) Guaranties or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

(6) Reinsurance agreements covering all or substantially all of one (1) or more lines of insurance of the ceding company.

(iv) All matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(c) Materiality. No information need be disclosed on the registration statement filed pursuant to section 4 (b) [subdivision (b) of this section] if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half ($\frac{1}{2}$) of one per cent (1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(d) Amendments to registration statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition, provided, however, that subject to subsection (c) of section 5 [40-5513], each registered insurer shall so report all dividends and other distributions to shareholders within two (2) business days following the declaration thereof.

(e) Termination of registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) Consolidated filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(g) Alternative registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(h) Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

(i) Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) Violations. The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

History: En. Sec. 4, Ch. 64, L. 1971.

40-5513. Standards. (a) Transactions with affiliates. Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.

(3) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) Adequacy of surplus. For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of business.

(4) The extent of the geographical dispersion of the insurer's insured risks.

- (5) The nature and extent of the insurer's reinsurance program.
- (6) The quality, diversification, and liquidity of the insurer's investment portfolio.
- (7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.
- (8) The surplus as regards policyholders maintained by other comparable insurers.
- (9) The adequacy of the insurer's reserves.
- (10) The quality and liquidity of investments in subsidiaries made pursuant to section 3 [40-5511]. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

(c) Dividends and other distributions. No insurer subject to registration under section 6 [40-5514] shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or the commissioner shall have approved such payment within such thirty (30) day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the greater of ten per cent (10%) of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve (12) month period ending the thirty-first day of December next preceding, but shall not include prorata distributions of any class of the insurer's own securities.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the thirty (30) day period referred to above.

History: En. Sec. 5, Ch. 64, L. 1971.

40-5514. Examination. (a) Power of commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under sections 40-2713, 40-2714, 40-2715, 40-2716, 40-2717, R. C. M., 1947, relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under section 4 [40-5512] to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commis-

sioner shall have the power to examine such affiliates to obtain such information.

(b) Purpose and limitation of examination. The commissioner shall exercise his power under subsection (a) above only if the examination of the insurer is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(c) Use of consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) Expenses. Each registered insurer producing for examination records, books and papers pursuant to subsection (a) above shall be liable for and shall pay the expense of such examination.

History: En. Sec. 6, Ch. 64, L. 1971.

40-5515. Confidential treatment. All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 6 [40-5514] and all information reported pursuant to section 4 [40-5512], shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

History: En. Sec. 7, Ch. 64, L. 1971.

40-5516. Rules and regulations. The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this article.

History: En. Sec. 8, Ch. 64, L. 1971.

40-5517. Injunctions—prohibitions against voting securities—sequestration of voting securities. (a) Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court for Lewis and Clark county for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this article or any such rule, regulation or order, and for such other equitable re-

lief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(b) Voting of securities—when prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder the insurer or the commissioner may apply to the district court for Lewis and Clark county or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 5 [40-5513] or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(c) Sequestration of voting securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation or order issued by the commissioner hereunder, the district court for Lewis and Clark county or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this article. Notwithstanding any other provisions of law, for the purposes of this article the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

History: En. Sec. 9, Ch. 64, L. 1971.

40-5518. Criminal proceedings. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this article, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this article may be fined not more than five thousand dollars (\$5,000). Any individual who willfully violates this article may be fined

not more than five hundred dollars (\$500) or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than two (2) years or both.

History: En. Sec. 10, Ch. 64, L. 1971.

40-5519. Receivership. Whenever it appears to the commissioner that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed to take possession of the property of such domestic insurer and to conduct the business thereof.

History: En. Sec. 11, Ch. 64, L. 1971.

40-5520. Revocation, suspension, or nonrenewal of insurer's license. Whenever it appears to the commissioner that any person has committed a violation of this article which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

History: En. Sec. 12, Ch. 64, L. 1971.

40-5521. Judicial review—mandamus. (a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the commissioner pursuant to this article may appeal therefrom to the district court for Lewis and Clark county. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(b) The filing of an appeal pursuant to this section shall stay the application of any such rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors or the public.

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this article may petition the district court for Lewis and Clark county for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

History: En. Sec. 13, Ch. 64, L. 1971.

40-5522. Conflict with other laws. All laws and parts of laws of this state inconsistent with this article are hereby superseded with respect to matters covered by this article.

History: En. Sec. 14, Ch. 64, L. 1971.

Separability Clause

Section 15 of Ch. 64, Laws 1971 read "Separability of provisions: If any provision of this article or the application thereof to any person or circumstance is

held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and for this purpose the provisions of this article are separable."

CHAPTER 56—WORKMEN'S COMPENSATION INSURANCE
PREMIUM RATES

- Section 40-5601. Declaration of policy—purpose of act.
 40-5602. Applicability of act.
 40-5603. Certain reciprocal insurers excluded.
 40-5604. Rates, how made.
 40-5605. Excessive, inadequate or discriminatory rates prohibited.
 40-5606. Uniformity neither required nor prohibited.
 40-5607. Classification manuals, rules and rating plans: filed with commissioner—supporting information required—public inspection.
 40-5608. Suspension or modification of filing requirements.
 40-5609. Review of filings by commissioner—waiting period—special filings.
 40-5610. Notice of disapproval of filing.
 40-5611. Notice and hearing on disapproval of filing subsequent to review period.
 40-5612. Filings meeting requirements of act not disapproved.
 40-5613. Enforcement of filed rates—lower rates prohibited.
 40-5614. Excess rates.
 40-5615. Deviations from filings—procedure and effect of modifications.
 40-5616. Membership in rating organization required.
 40-5617. Composition of rating organization.
 40-5618. Industrial accident board as member of committee on operation of rating organization—other members.

40-5601. Declaration of policy—purpose of act. (1) It is declared that the public welfare is served by the making of premium rates for workmen's compensation insurance coverage in concert, and that the review by the state of the rates so made is necessary and desirable in the public interest.

(2) It is the purpose of this act (a) to authorize such rate-making in concert, and the operating of rating organizations thereto;

(b) to establish the general bases and standards for the making of such rates;

(c) to provide for review by the state of such rate-making and the results thereof.

History: En. Sec. 1, Ch. 329, L. 1969.

Title of Act

An act to establish a policy for the making of premium rates for workmen's compensation insurance issued under plan Number 2 of the Workmen's Compensation Act, sections 92-1001 through 92-1012, R. C. M. 1947, and plan Number 3 of the Workmen's Compensation Act, sections 92-1101 through 92-1123, R. C. M. 1947, and to insurance or guaranty by surety insurers of the obligations of employers under the Workmen's Compensation Act; providing for rate-making factors, rate standards and uniformity of rates, and

providing for rate filing, exemptions from filing and effective date of filing; providing for disapproval of rate filing by the state auditor, ex-officio commissioner of insurance; providing for disapproval of filing after consideration by the commissioner of insurance; providing for the scope of disapproval power by the commissioner of insurance; providing for adherence to filing; relating to excess rates, deviations from such rates and defining the power of the commissioner of insurance relative thereto; requiring rating organization membership and application of the laws of Montana as to certain powers of the commissioner of insurance and to

certain public employment; repealing all acts and parts of acts in conflict herewith; providing for filings by rating bureaus with the commissioner of insurance, including workmen's compensation insurance; requiring membership in a rating organization of all insurers writing workmen's compensation insurance and requiring membership of the Montana state industrial accident board, without election, on any committee of a rating organization of which it is a member; providing for application to the commissioner of insurance for percentage increase or decrease of premiums and providing procedure therefor; amending section 92-1101, R. C. M. 1947, relating to payment of premiums

by employers under plan Number 3 and referring to industrial accident board's membership in a rating organization; amending section 92-1104, R. C. M. 1947, relating to industrial accident board's power to determine premiums and referring to its membership in a rating organization; and amending section 92-1105, R. C. M. 1947, relating to the intent and purpose of plan Number 3, and referring to the industrial accident board's membership in a rating organization.

Cross-References

Workmen's Compensation Act, Sec. 92-101 et seq.

40-5602. Applicability of act. This act applies to the making of premium rates for workmen's compensation insurance issued under compensation plan Number 2 of the Workmen's Compensation Act, sections 92-1001 to and including 92-1012, and for workmen's compensation insurance issued under compensation plan Number 3 of the Workmen's Compensation Act, sections 92-1101 to and including 92-1123.

History: En. Sec. 2, Ch. 329, L. 1969.

40-5603. Certain reciprocal insurers excluded. This act shall not apply as to any reciprocal insurer transacting workmen's compensation insurance only and insuring solely the hazards or perils of its subscribers exclusively associated with a single industry.

History: En. Sec. 3, Ch. 329, L. 1969.

40-5604. Rates, how made. All rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both country-wide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among

risks that can be demonstrated to have a probable effect upon losses or expenses.

History: En. Sec. 4, Ch. 329, L. 1969.

40-5605. Excessive, inadequate or discriminatory rates prohibited. Rates shall not be excessive, inadequate or unfairly discriminatory.

History: En. Sec. 5, Ch. 329, L. 1969.

40-5606. Uniformity neither required nor prohibited. Except to the extent necessary to meet the provisions of section 4 [40-5604], uniformity among insurers in any matter within the scope of section 4 [40-5604] and section 5 [40-5605] is neither required nor prohibited.

History: En. Sec. 6, Ch. 329, L. 1969.

40-5607. Classification manuals, rules and rating plans filed with commissioner—supporting information required—public inspection. (1) There shall be filed with the insurance commissioner on behalf of every insurer writing workmen's compensation coverages in this state, every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the filing is supported, and the insurance commissioner does not have sufficient information to determine whether such filing meets the requirements of this act, he shall require the insurer's rating organization or the insurer to furnish the information upon which it supports the filing and in such event, the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include:

- (a) the experience or judgment of the insurer;
 - (b) the insurer's or rating organization's interpretation of any statistical data relied upon;
 - (c) the experience of other insurers or rating organizations; or
 - (d) any other relevant factors.
- (2) A filing and any supporting information shall be open to public inspection after the filing becomes effective.

History: En. Sec. 7, Ch. 329, L. 1969.

40-5608. Suspension or modification of filing requirements. Under such rules and regulations as he shall adopt, the insurance commissioner may, by written order, suspend or modify the requirements of filing as to any kind of insurance, subdivision or combination thereof, or as to classes or risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The insurance commissioner may make such examination as he may deem advisable

to ascertain whether any rates affected by such order meet the standards set forth in section 5 [40-5605].

History: En. Sec. 8, Ch. 329, L. 1969.

40-5609. Review of filings by commissioner—waiting period—special filings. (1) The insurance commissioner shall review filings as soon as reasonably possible after they have been made, in order to determine whether they meet the requirements of this act.

(2) Subject to the exception specified in subsection (3) below, each filing shall be on file for a waiting period of fifteen (15) days before it becomes effective, which period may be extended by the insurance commissioner for an additional period, not to exceed fifteen (15) days if he gives written notice within such waiting period to the rating organization which made the filing, that he needs such additional time for the consideration of the filing. Upon the written application by the insurer or rating organization, the insurance commissioner may authorize a filing which he has reviewed to become effective before expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this act unless disapproved by the insurance commissioner within the waiting period or any extension thereof.

(3) Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this act until such time as the insurance commissioner reviews the filing and so long thereafter as the filing remains in effect.

History: En. Sec. 9, Ch. 329, L. 1969.

40-5610. Notice of disapproval of filing. If, within the waiting period or any extension thereof as provided in section 9 [40-5609], the insurance commissioner finds that a filing does not meet the requirements of this act, he shall send to the rating organization which made the filing, written notice of disapproval of the filing, specifying therein in what respect he finds the filing fails to meet the requirements of this act and stating that the filing shall not become effective.

History: En. Sec. 10, Ch. 329, L. 1969.

40-5611. Notice and hearing on disapproval of filing subsequent to review period. If, at any time subsequent to the applicable review period provided for in section 9 [40-5609], the insurance commissioner finds that a filing does not meet the requirements of this act, he shall, after a hearing held upon not less than ten (10) days' written notice specifying the matters to be considered at such hearing, to every rating organization which made the filing, issue an order specifying in what respect he finds that the filing fails to meet the requirements of this act, and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. Copies of the order shall be sent to

every such rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

History: En. Sec. 11, Ch. 329, L. 1969.

40-5612. Filings meeting requirements of act not disapproved. No manual of classifications, rules, rating plan, or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, and which has been filed pursuant to the requirements of section 7 [40-5607], shall be disapproved if the rates thereby produced meet the requirements of this act.

History: En. Sec. 12, Ch. 329, L. 1969.

40-5613. Enforcement of filed rates—lower rates prohibited. No insurer shall issue, renew or continue in force in this state any workmen's compensation insurance at premium rates which are less than the rates applicable under the filings in effect for the insurer, or in effect in accordance with section 8 [40-5608], except as is otherwise provided in this act as to the industrial accident board.

History: En. Sec. 13, Ch. 329, L. 1969.

40-5614. Excess rates. Upon the written application of the insured, stating his reasons therefor, filed with and approved by the insurance commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

History: En. Sec. 14, Ch. 329, L. 1969.

40-5615. Deviations from filings—procedure and effect of modifications. (1) Every member of a rating organization shall adhere to the filings made on its behalf by such organization, except that any plan Number 2 insurer may make written application to the insurance commissioner for permission to file a uniform percentage decrease or increase to be applied to the premium produced by the rating system so filed for a kind of insurance or for a class of insurance which is found by the insurance commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance:

(a) comprised of a group of manual classifications which is treated as a separate unit for rate making purposes; or

(b) for which separate expense provisions are included in the filings of the rating organization. Such application shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to such rating organization.

(2) The insurance commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than ten (10) days' written notice thereof. In the event the insurance commissioner is advised by the rating organi-

zation that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. In permitting or denying such modification with respect to workmen's compensation insurance, the insurance commissioner shall give consideration to the operating methods and expense provisions of the insurer as compared with the expense provisions included in the rating system filed by such rating organization.

(3) The insurance commissioner shall issue an order permitting the modification for such insurer to be filed, if he finds it to be justified, and it shall thereupon become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory.

(4) Each deviation permitted to be filed shall be effective for a period of one (1) year from the date of such permission, unless terminated sooner with the approval of the insurance commissioner.

(5) Any deviation adopted by the industrial accident board for plan Number 3 rates shall be final and without review or approval by the state insurance commissioner except that the said board shall file with the insurance commissioner's office a schedule of such deviations so adopted and a statement of the bases for such modification.

History: En. Sec. 15, Ch. 329, L. 1969.

40-5616. Membership in rating organization required. Every insurer, including the Montana state industrial accident board, writing workmen's compensation insurance in this state, shall be a member of a workmen's compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

History: En. Sec. 16, Ch. 329, L. 1969.

40-5617. Composition of rating organization. Such a rating organization shall have as members not less than five (5) insurers authorized to write and writing workmen's compensation insurance in this state, and whose combined experience is determined by the insurance commissioner to be reasonably adequate for rate-making purposes.

History: En. Sec. 17, Ch. 329, L. 1969.

40-5618. Industrial accident board as member of committee on operation of rating organization—other members. In a rating organization of which the Montana industrial accident board is a member, it shall be entitled, without election, to membership on any committee thereof established in connection with the operation of the rating organization in this state. One member of each such committee shall be chosen by the stock insurers and one by the nonstock insurers. Such committee shall consist of three (3) members as herein provided for.

History: En. Sec. 18, Ch. 329, L. 1969.

Repealing Clause

Section 19 of Ch. 329, Laws 1969 repealed all acts and parts of acts in conflict therewith.

CHAPTER 57—INSURANCE GUARANTY ASSOCIATION

Section	40-5701.	Title.
	40-5702.	Purpose.
	40-5703.	Scope.
	40-5704.	Construction.
	40-5705.	Definitions.
	40-5706.	Creation of the association.
	40-5707.	Board of directors.
	40-5708.	Powers and duties of the association.
	40-5709.	Plan of operation.
	40-5710.	Duties and powers of the commissioner.
	40-5711.	Effect of paid claims.
	40-5712.	Nonduplication of recovery.
	40-5713.	Prevention of insolvencies.
	40-5714.	Examination of the association.
	40-5715.	Tax exemption.
	40-5716.	Recognition of assessments in rates.
	40-5717.	Immunity.
	40-5718.	Stay of proceedings—reopening of default judgments.

40-5701. Title. This act shall be known and may be cited as the Montana Insurance Guaranty Association Act.

History: En. Sec. 1, Ch. 63, L. 1971.

Title of Act

A bill to provide a guaranty association

for all insurers, to protect the public from insurer insolvency and providing for assessment among association members under certain conditions.

40-5702. Purpose. The purpose of this act is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

History: En. Sec. 2, Ch. 63, L. 1971.

40-5703. Scope. This act shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage, guaranty and ocean marine insurance.

History: En. Sec. 3, Ch. 63, L. 1971.

40-5704. Construction. This act shall be liberally construed to effect the purpose under section 2 [40-5702] which shall constitute an aid and guide to interpretation.

History: En. Sec. 4, Ch. 63, L. 1971.

40-5705. Definitions. As used in this act, (1) "Association" means the Montana insurance guaranty association created under section 6 [40-5706] of this act.

(2) "Commissioner" means the commissioner of insurance of this state.

(3) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this act applies issued by an insurer, if such insurer becomes an insolvent

insurer after the effective date of this act and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount due an reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(4) "Insolvent insurer" means (a) an insurer authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction.

(5) "Member insurer" means any person who (a) writes any kind of insurance to which this act applies under section 3 [40-5703], including the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in this state.

(6) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(7) "Person" means any individual, corporation, partnership, association or voluntary organization.

History: En. Sec. 5, Ch. 63, L. 1971.

40-5706. Creation of the association. There is created a nonprofit unincorporated legal entity to be known as the Montana insurance guaranty association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section 9 [40-5709] and shall exercise its powers through a board of directors established under section 7 [40-5707].

History: En. Sec. 6, Ch. 63, L. 1971.

40-5707. Board of directors. (1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty (60) days after the effective date of this act, the commissioner may appoint the initial members of the board of directors.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

History: En. Sec. 7, Ch. 63, L. 1971.

40-5708. Powers and duties of the association. (1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty (30) days after the determination of insolvency, or before the policy expiration date if less than thirty (30) days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars (\$100) and is less than three hundred thousand [dollars] (\$300,000), except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c) Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under section 13 [40-5713] and other expenses authorized by this act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two per cent (2%) of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(e) Notify such persons as the commissioner directs under section 10 [40-5710] (2)(a).

(f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this act.

(2) The association may: (a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this act in accord with the plan of operation.

(c) Sue or be sued.

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this act.

(e) Perform such other acts as are necessary or proper to effectuate the purpose of this act.

(f) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

History: En. Sec. 8, Ch. 63, L. 1971.

40-5709. Plan of operation. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within ninety (90) days following the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall: (a) Establish the procedures whereby all the powers and duties of the association under section 8 [40-5708] will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under section 7 [40-5707].

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty (30) days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under section 8 [40-5708] (1)(c) and 8 [40-5708] (2)(b), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

History: En. Sec. 9, Ch. 63, L. 1971.

40-5710. Duties and powers of the commissioner.

(1) The commissioner shall: (a) Notify the association of the existence of an insolvent insurer not later than three (3) days after he receives notice of the determination of the insolvency.

(b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may: (a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this act. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of

operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five per cent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100) per month.

(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this act shall be subject to judicial review in a court of competent jurisdiction.

History: En. Sec. 10, Ch. 63, L. 1971.

40-5711. Effect of paid claims. (1) Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall co-operate with the association to the same extent as such person would have been required to co-operate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insured's to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this act against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

History: En. Sec. 11, Ch. 63, L. 1971.

40-5712. Nonduplication of recovery. (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the in-

sured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History: En. Sec. 12, Ch. 63, L. 1971.

40-5713. Prevention of insolvencies. (1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty (30) days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

History: En. Sec. 13, Ch. 63, L. 1971.

40-5714. Examination of the association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

History: En. Sec. 14, Ch. 63, L. 1971.

40-5715. Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

History: En. Sec. 15, Ch. 63, L. 1971.

40-5716. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which this act applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

History: En. Sec. 16, Ch. 63, L. 1971.

40-5717. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this act.

History: En. Sec. 17, Ch. 63, L. 1971.

40-5718. Stay of proceedings—reopening of default judgments. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for sixty (60) days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that such made judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.

History: En. Sec. 18, Ch. 63, L. 1971.

REVISED CODES OF MONTANA

VOLUME 3

Part 2

1971 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 3 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3
(PART 2) THROUGH VOLUME 478, PACIFIC
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REVISED CODES OF MONTANA

AN ACT

TO

REPEAL AND REENACT THE

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For index see pocket supplement to Replacement Volume 9

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CHAPTER 1—OBLIGATIONS OF EMPLOYERS

41-103. (7758) When not.

Assumption of Risk

Where master, in an action against him for injuries sustained by a servant during course of employment, introduced evidence tending to show that the servant had actual or implied knowledge of the dangerous condition but voluntarily remained in the face of the danger, and that the injury resulted as a usual and probable consequence of the dangerous condition, then refusal of the trial court to

instruct the jury properly on assumption of risk deprived defendant of a possible defense and was prejudicial error. *Wollan v. Lord*, 142 M 498, 385 P 2d 102.

Employee with prior back injury who neither informed his employer of his previous injury, nor refused to lift 500-pound tire without additional help, assumed the risk of the resultant additional injury to his back. *McLaughlin v. Ballard*, — M —, 478 P 2d 281.

CHAPTER 2—OBLIGATIONS OF EMPLOYEES

41-211. (7778) What belongs to employer.

Customer Lists

Where names and addresses of milk-route customers were not confidential and were readily accessible, route salesman who terminated his employment with a dairy and returned his list of customers

but remembered their names and addresses would not be enjoined from soliciting them as customers for a competing dairy. *Best Dairy Farms, Inc. v. Houchen*, 152 M 194, 448 P 2d 158.

CHAPTER 3—TERMINATION OF EMPLOYMENT

Section 41-304. Termination at will.

41-305.1. Termination of employment because of attachment or garnishment prohibited.

41-304. (7789) Termination at will. An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by sections 41-101 to 41-407 and 2-109 to 2-112 and 2-401 to 2-405, and except as provided in section 1 [41-305.1] of this act.

History: En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R. C. M. 1921; amd. Sec. 2, Ch. 245, L. 1969. Cal. Civ. C. Sec. 1999. Field Civ. C. Sec. 1029.

Amendments

The 1969 amendment added "and except as provided in section 1 of this act."

41-305.1. Termination of employment because of attachment or garnishment prohibited. No employer shall discharge or lay off an employee because of attachment or garnishment served on the employer against the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969.

Title of Act

An act relating to termination of em-

ployment providing that garnishment or attachment of wages may not be grounds for termination of employment; amending section 41-304, R. C. M. 1947.

CHAPTER 4—MASTER AND SERVANT

41-403. (7796) Same—presumed to be monthly, when.

Reimbursement of Expenses

This section is broad enough to cover reimbursement of expenses incurred by the employee, and employee's claim for

reimbursement accrued monthly in the absence of any other understanding. Cartwright v. Joyce, — M —, 473 P 2d 515.

CHAPTER 6—REPORT OF ALIEN EMPLOYEES TO INDUSTRIAL ACCIDENT BOARD

(Repealed—Section 1, Chapter 144, Laws of 1971)

41-601 to 41-604. (3040 to 3043) Repealed.

Repeal

Sections 41-601 to 41-604 (Secs. 1 to 4, Ch. 134, L. 1919), relating to reports on

alien employees, were repealed by Sec. 1, Ch. 144, Laws 1971.

CHAPTER 7—PREFERENCE OF MONTANA LABOR IN PUBLIC WORKS CONTRACTS

Section 41-701. Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.

41-701. (3043.1) Preference of Montana labor in public works—wage scale—not to conflict with federal statutes. In all contracts hereafter let for state, county, municipal, school, heavy highway or municipal construction, repair and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work, and that the said contractor must further pay the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions,

and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. "Standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions, applicable to the county or locality in which the work is being performed," means those wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions which are paid in the county or locality by other contractors for work of a similar character performed in that county or locality by each craft, classification or type of workman needed to complete a contract under this act. When work of a similar character is not being performed in the county or locality, the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions shall be those rates established by collective bargaining agreements in effect in the county or locality for each craft, classification or type of workman needed to complete the contract. No contract shall be let to any person, firm, association or corporation refusing to execute an agreement with the above-mentioned provisions in it; provided that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors and marines, and prohibiting as unlawful any other preference or discrimination among citizens of the United States. All public works contracts under this act shall be approved in writing by the legal adviser of the contracting state, county, municipal corporation, school district, assessment district or special improvement district body or officer prior to execution by the contracting public officer or officers. The Montana commissioner of labor and industry shall undertake to keep and maintain copies of collective bargaining agreements and other information from which rates and jurisdictional areas applicable to public works contracts under this act may be ascertained. Whenever the employer is not signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages.

History: En. Sec. 1, Ch. 102, L. 1931; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969.

Amendments

The 1969 amendment rewrote portions of this section, redefining the standard prevailing rate of wages to include fringe

benefits for health and welfare and pension contributions and travel allowance provisions, providing for approval of public works contracts by the contracting state agency's legal adviser and requiring the commissioner of labor and industry to keep copies of collective bargaining agreements and other information.

CHAPTER 8—VOCATIONAL REHABILITATION AND EDUCATION

- Section 41-801. Definitions.
- 41-803. Director of division of vocational rehabilitation.
- 41-804. Administration.
- 41-808. Eligibility for vocational rehabilitation.
- 41-810. Hearings.

41-801. Definitions. As used in this act:

(a) to (d). * * * [Same as parent volume.]

(e) "Disabled individual" means any person with an impairment of a physical or mental nature that can be diagnosed by a physician or appropriate specialist;

(f) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his employment handicap, and to enable him in so far as possible to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, and training books and materials, facilities for groups of handicapped, service to family members and follow-up service;

(g). * * * [Same as parent volume.]

(h) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions, (except medical care for acute conditions during the course of a rehabilitation plan which, if not corrected, would constitute a hazard to plan completion);

(i) to (k). * * * [Same as parent volume.]

(l) "Regulations" means regulations made by the director with the approval of the state board;

(m) "Rehabilitation plan" means a plan for providing services that will render a disabled individual employable and is jointly developed by the client and a representative of this division.

History: En. Sec. 1, Ch. 74, L. 1947; amd. Sec. 1, Ch. 218, L. 1959; amd. Sec. 1, Ch. 53, L. 1961; amd. Sec. 1, Ch. 192, L. 1971.

Amendments

The 1971 amendment substituted "with an impairment of a physical or mental nature that can be diagnosed by a physician or appropriate specialist" at the end

of subdivision (e) for "who has a substantial employment handicap"; added "facilities for groups of handicapped, service to family members and follow-up service" at the end of subdivision (f); deleted "not to exceed ninety (90) days" following "hospital care" in subdivision (h); added at the end of subdivision (h) the clause enclosed in parentheses; and added subdivision (m).

41-802. Establishment of division of vocational rehabilitation.

Cross-References

Division abolished and functions transferred, sec. 82A-1902(2).

41-803. Director of division of vocational rehabilitation. The division shall be administered, under the general supervision and direction of the state board, by a director appointed by such board in accordance with established personnel standards and on the basis of his education,

training, experience, and demonstrated ability. In carrying out his duties under this act, the director

(a) to (c). * * * [Same as parent volume.]

(d) shall prepare and submit to the state board annual reports of activities and expenditures, and report as provided in section 2 [82-4002] of this act;

(e) to (g). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 74, L. 1947; amd. Sec. 3, Ch. 53, L. 1961; amd. Sec. 12, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted "re- port as provided in section 2 of this act"

for "prior to each regular session of the legislature, estimates of sums required for carrying out this act and estimates of the amounts to be made available for this purpose from all sources" in subdivision (d).

41-804. Administration. Except as otherwise provided by law, the state board, through the division, shall provide vocational rehabilitation services to disabled individuals determined by the director to be eligible therefor, and, in carrying out the purposes of this act, the division is authorized, among other things,

(a). * * * [Same as parent volume.]

(b) to conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals.

History: En. Sec. 4, Ch. 74, L. 1947; amd. Sec. 4, Ch. 53, L. 1961; amd. Sec. 2, Ch. 192, L. 1971.

of residents of the states concerned"; and redesignated former subdivision (c) as subdivision (b).

Amendments

The 1971 amendment deleted a former subdivision (b) reading "to enter into reciprocal agreements with other states to provide for the vocational rehabilitation

Cross-References

Board of education functions transferred to department of social and rehabilitation services, sec. 82A-1903.

41-808. Eligibility for vocational rehabilitation. Vocational rehabilitation services shall be provided to any disabled individual (1) who is in the state at the time of filing his application therefor and whose vocational rehabilitation, the director determines after full investigation, can be satisfactorily achieved, or (2) who is eligible therefor under the terms of an agreement with another state or with the federal government: Provided, that, except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the state board thereunder, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

(a) to (f). * * * [Same as parent volume.]

History: En. Sec. 8, Ch. 74, L. 1947; amd. Sec. 3, Ch. 192, L. 1971.

Amendments

The 1971 amendment substituted "in the state" for "a resident of the state" in clause (1) in the preliminary paragraph.

41-810. Hearings. Any individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the division shall be entitled, in accordance with regulations, to a fair hearing by the state board.

History: En. Sec. 10, Ch. 74, L. 1947; amd. Sec. 4, Ch. 192, L. 1971.

Amendments

The 1971 amendment substituted "division" for "bureau."

Cross-References

Quasi-judicial functions of board transferred to board of social and rehabilitation appeals, sec. 82A-1907(2).

CHAPTER 9—STATE BOARD OF ARBITRATION AND CONCILIATION

Section 41-906. Decisions of board—report to governor.

41-901. (3052) State board of arbitration and conciliation.

Cross-References

Board abolished, sec. 82A-1010(2).

41-904. (3055) Settlement of controversies.

Cross-References

Professional Negotiations Act for Teachers, secs. 75-6115 et seq.

41-906. (3057) Decisions of board—report to governor. Upon the receipt of said application and after such notice, the board shall proceed as before provided, and render a written decision, which shall be open to the public inspection, shall be recorded upon the records of the board, [and] the board shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 3335, Pol. C. 1895; re-en. Sec. 1675, Rev. C. 1907; re-en. Sec. 3057, R. C. M. 1921; amd. Sec. 13, Ch. 93, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "and."

Amendments

The 1969 amendment substituted "the board shall report as provided in section 2 of this act" for "and published at the discretion of the same in an annual report to be made to the governor on or before the first day of December in each year."

CHAPTER 11—HOURS OF LABOR IN VARIOUS EMPLOYMENTS

Section 41-1120. Violation of preceding section a misdemeanor—penalty.

41-1123. Railway employees—hours of labor.

41-1135. Employment of persons under nineteen as bartenders forbidden.

41-1136. Penalty.

41-1118. (3076) Repealed.

Repeal

Section 41-1118 (Sec. 1, Ch. 108, L. 1913; Sec. 1, Ch. 18, L. 1917), relating to

hours of labor for female employees, was repealed by Sec. 2, Ch. 51, Laws 1971.

41-1120. (3078) Violation of preceding section a misdemeanor—penalty. Any employer who shall fail, neglect, or refuse to provide suitable seats, as provided in section 41-1119, or who shall permit or suffer any

overseer, superintendent, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), or be imprisoned in the county jail for a period of not less than ten (10) nor more than sixty (60) days, or both such fine and imprisonment.

History: En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1971.

Repealing Clause

Section 2 of Ch. 51, Laws 1971 read "Section 41-1118, R. C. M. 1947, is repealed."

Amendments

The 1971 amendment deleted clauses relating to violations of section 41-1118 which appeared near the beginning of the section; and made minor changes in style.

Effective Date

Section 3 of Ch. 51, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 20, 1971.

41-1123. (3081) Railway employees—hours of labor. On all lines of railroads or railways operated in whole or in part within this state, the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators, and agents acting as operators, employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state, shall not at any time exceed twelve (12) consecutive hours, or to be on duty for more than sixteen (16) hours in the aggregate in any twenty-four (24) hour period. At least eight (8) hours shall be allowed them off duty before said engineers, firemen, conductors, trainmen, operators, and agents acting as operators, are again ordered or required to go on duty; provided, however, that nothing in this section shall be construed to allow any engineer, fireman, conductor, or trainman to desert his locomotive or train in case of accident, storms, wrecks, washouts, snow blockade, or any unavoidable delay arising from like causes, or to allow said engineer, fireman, conductor, or trainman to tie up any passenger or mail train between terminals.

History: En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R. C. M. 1921; amd. Sec. 1, Ch. 205, L. 1969.

Amendments

The 1969 amendment deleted "steam" before "railroads" at the beginning of the first sentence and reduced maximum consecutive hours of labor from sixteen to twelve.

Constitutionality

This section and section 41-1124, which purport to regulate maximum number of consecutive working hours of railroad employees, are unconstitutional under supremacy clause of United States constitution since they are in direct conflict with 45 U.S.C. §§ 61 to 64 which regulate same matter. *Union Pacific R. Co. v. Woodahl*, 308 F Supp 1002.

41-1135. Employment of persons under nineteen as bartenders forbidden. No person under the age of nineteen (19) years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer or wines in any establishment which sells liquors, beer or wines at retail.

History: En. Sec. 1, Ch. 114, L. 1941; amd. Sec. 11, Ch. 240, L. 1971.

Amendments

The 1971 amendment reduced the minimum age from 21 to 19 years.

41-1136. Penalty. Any retail vendor of liquors, beer or wines who employs any such person under the age of nineteen (19) years is guilty of a misdemeanor.

History: En. Sec. 2, Ch. 114, L. 1941;
amd. Sec. 12, Ch. 240, L. 1971.

Amendments

The 1971 amendment reduced the specified age from 21 to 19 years.

CHAPTER 12—APPRENTICESHIP COUNCIL AND CONTRACTS

Section 41-1201. Apprenticeship council.

41-1202. Duties of state apprenticeship council.

41-1201. Apprenticeship council. (a) The governor of the state of Montana shall appoint an apprenticeship council, which shall be a part of the department of labor and industry, and shall consist of six (6) members, three (3) of whom shall be appointed from and be representative of active employers employing persons in recognized apprenticeable trades, and three (3) of whom shall be appointed from and be representative of active employee organizations whose members are employed in recognized apprenticeable trades. The terms of office of the members of the apprenticeship council first appointed by the governor of the state of Montana shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years and three (3) years respectively. After the expiration of the original terms, each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The commissioner of labor and industry, the state official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service shall be ex officio members of said council without vote. The council shall elect a chairman and vice-chairman from its voting membership, one (1) of which shall be a representative of employers and one (1) shall be a representative of employees, and each shall hold office for a term of one (1) year and until his successor is elected.

(b) to (d). * * * [Same as parent volume.]

(e) The commissioner of labor and industry may, subject to the approval of the appointed members of the council, appoint a director of apprenticeship and such other clerical, technical and professional staff as shall be necessary to carry out the provisions of this act. The director of apprenticeship shall serve as the secretary of the council, without a vote.

History: En. Sec. 1, Ch. 149, L. 1941;
amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1,
Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L.
1963.

of which see parent volume; and added subsection (e).

Cross-References

Council abolished and functions transferred, sec. 82A-1002(2).

Amendment

The 1963 amendment completely rewrote subsection (a), for previous version

41-1202. Duties of state apprenticeship council. The state apprenticeship council by a majority vote, shall:

(1) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this act;

(2) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this act;

(3) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;

(4) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who

(5) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, co-ordination of instruction with job experiences, and the selection and training of teachers and co-ordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963.

sentence which read, "The voting members of the apprenticeship council are authorized to appoint such other personnel as may be necessary to aid the apprenticeship council in the execution of their functions under this act."

Amendment

The 1963 amendment deleted a final

CHAPTER 13—PAYMENT OF WAGES AND PROTECTION OF DISCHARGED EMPLOYEES

Section 41-1302. Penalty for failure to pay wages at times specified in law.

41-1303. Employees separated from employment before payday—wages, when payable.

41-1314.1. Enforcement.

41-1314.2. Authority to take wage assignments.

41-1302. (3085) Penalty for failure to pay wages at times specified in law. Any employer, as such employer is defined in this act, who fails to pay any of his employees, as provided in the preceding or following sections, or violates any other provision of this act, shall be guilty of a misdemeanor. A penalty shall also be assessed against and paid by such employer and become due such employee as follows:

A sum equivalent to the fixed amount of five (5%) per cent of the wages due and unpaid, shall be assessed for each day, except Sundays and legal holidays, upon which such failure continues after the day upon which such wages were due, except that such failure shall not be deemed to continue more than twenty (20) days after the date such wages were due.

It shall be the duty of the commissioner of labor to inquire diligently for any violations of this act, and to institute actions for the collection of unpaid wages and for the penalties provided for herein, in such

cases as he may deem proper, and to enforce generally the provisions of this act.

Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state of Montana to prosecute actions, both civil and criminal, for such violations of this act as may come to his knowledge, or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967.

Amendments

The 1967 amendment extended the application of the first sentence to violations of the entire act; substituted the present second sentence for "A penalty shall also attach to such employer and

become due such employee as follows: A sum equivalent to a penalty of five (5%) per cent of the wages due and not paid, as herein provided, as liquidated damages, and such penalty shall attach and suit may be brought in any court of competent jurisdiction to recover the same and the wages due"; inserted "for the collection of unpaid wages and for the" in the next to last paragraph; and made minor changes in phraseology.

41-1303. (3086) Employees separated from employment before pay-day—wages, when payable. Whenever any employee is separated from the employ of any such employer, then all the unpaid wages of such employee shall become due and payable within three (3) days, either through the regular pay channels or by mail if requested by the employee; provided however, that where an employer's payroll checks originate at an office outside the state of Montana the time provided herein for payment of wages shall be extended for three (3) additional days.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R. C. M. 1921; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967.

Amendments

The 1967 amendment rewrote this section. For previous text, see parent volume.

41-1306. (3089) Judgment for wages shall include attorney's fee.

Failure To Include in Memorandum

Award of attorney fees was proper in employee's action to recover for services rendered as bookkeeper under an implied contract, even though not included in

plaintiff's memorandum of costs, since the award was made directly to attorney. Cartwright v. Joyce, — M —, 473 P 2d 515.

41-1314.1. Enforcement. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person has violated any provision of this act or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the commissioner.

History: En. Sec. 3, Ch. 40, L. 1967.

Title of Act

An act amending sections 41-1302 and 41-1303, R. C. M. 1947, relating to time for payment of wages; authorizing the

commissioner of labor to investigate violations; and authorizing said commissioner to accept assignments of wage claims and institute proceedings to enforce such claims.

41-1314.2. Authority to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee, and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this act. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

Any judgment for the plaintiff in a proceeding pursuant to this act shall include all costs reasonably incurred in connection with the proceeding, including attorneys' fees. If the proceeding is maintained by the commissioner, no court costs or fees shall be required of him, nor shall he be required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

The commissioner is authorized to issue, amend, and enforce rules and regulations for the purpose of carrying out the provisions of the act.

History: En. Sec. 4, Ch. 40, L. 1967.

CHAPTER 14—EMPLOYMENT AGENCIES, REGULATION

- Section 41-1417. Short title.
- 41-1418. Definitions.
- 41-1419. Records to be kept—contents—examination by director.
- 41-1420. Contract—contents—applicant entitled to copy.
- 41-1421. Director's approval required before using contract—No fee for referral to state employment office or hiring hall.
- 41-1422. Bona fide request from employer required before sending applicant for interview.
- 41-1423. Administration by director—rules and regulations—powers.
- 41-1424. Conducting business without license a misdemeanor.
- 41-1425. Bond of licensee—cash deposit.
- 41-1426. Application for license—contents.
- 41-1427. Expiration of license.
- 41-1428. Director's consent necessary before transferring license—changes in management.
- 41-1429. Grounds for denial, suspension, or revocation of license.
- 41-1430. License fees.
- 41-1431. When can agency charge fee from applicant.
- 41-1432. Return of excessive fees.
- 41-1433. Additional regulatory rules.
- 41-1434. Reference to prosecuting officials for enforcement.
- 41-1435. Written assurance of discontinuance.
- 41-1436. Civil penalty for violating court order.
- 41-1437. Jurisdiction over nonresidents.
- 41-1438. Provisions exclusive—authority of political subdivisions not affected—disposition of license fees.

41-1401 to 41-1416. (4157 to 4172) Repealed.

Repeal Sections 41-1401 to 41-1416 (Secs. 1 to 16, Ch. 225, L. 1919), relating to employment agencies, were repealed by Sec. 23, Ch. 430, Laws 1971.

41-1417. Short title. This act shall be known and cited as "The Employment Agency Act."

History: En. Sec. 1, Ch. 430, L. 1971. R. C. M. 1947, concerning the regulation of private employment agencies, including provision for penalties for the violation of such regulations.

Title of Act An act replacing chapter 14, Title 41, of the Laws of 1971.

41-1418. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as hereinafter used in this chapter, shall have the following meanings:

(1) "Employment agency" is synonymous with "agency" and shall mean any business in which any part of the business's gross or net income is derived from a fee received from applicants, and in which any of the following activities are engaged in:

(a) The offering, promising, procuring or attempting to procure employment for applicants; or

(b) The giving of information regarding where and from whom employment may be obtained.

In addition, the term "employment agency" shall mean and include any person, bureau, organization or school which for profit, by advertisement or otherwise; offers, as one of its main objects or purposes, to procure employment for any person who pays for its services, or which collects tuition, or charges for service of any nature, where the main object of the person paying the same is to secure employment. The term "employment agency" shall not include labor union organizations, temporary service contractors proprietary schools, or the Montana state employment agency.

(2) "Temporary service contractors" shall mean any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant," except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, partnership or association.

(6) "Director" shall mean the commissioner of the department of labor and industries.

History: En. Sec. 2, Ch. 430, L. 1971.

41-1419. Records to be kept — contents — examination by director. Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited; the name and address of the applicant; kind of position ordered by the employer; kind of position accepted by the applicant; probable duration of the employment, if known; rate of wage or salary to be paid the applicant; amount of the employment agency's fee; dates and amounts of refund if any, and reason for such refund; and the contract agreed to between the agency and applicant.

The director shall have authority to demand and to examine, at the employment agency's regular place of business, all books, documents, and records in its possession for inspection. Unless otherwise provided by rules or regulations adopted by the director, such records shall be maintained for a period of three (3) years from the date in which they are made.

History: En. Sec. 3, Ch. 430, L. 1971.

41-1420. Contract—contents—applicant entitled to copy. An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency. Such contract shall contain the following:

- (1) The name, address, and telephone number of the employment agency;
- (2) Trade name if any;
- (3) The date of the contract;
- (4) The name of the applicant;
- (5) The amount of the fee to be charged the applicant;
- (6) A notice in eight-point bold face type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT — READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point bold face type or larger. The notice shall read as follows:

"This is a contract. If you accept employment with any employer through (name of employment agency) you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You are entitled to a copy of this contract at the time you sign it."

History: En. Sec. 4, Ch. 430, L. 1971.

41-1421. Director's approval required before using contract—No fee for referral to state employment office or hiring hall. Prior to using any contract in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract. The director shall disapprove any proposed contract which either tends to be or is vague, deceitful, misrepresentative or attempts to charge an unreasonable fee or is in violation of this act. No fee shall be charged an applicant referred to a state employment office or any organization having exclusive hiring hall procedures as provided in the National Labor Relations Act.

History: En. Sec. 5, Ch. 430, L. 1971.

41-1422. Bona fide request from employer required before sending applicant for interview. No employment agency shall send any applicant on an interview with a prospective employer without first having obtained, either orally or in writing, a bona fide request from such employer for the interview.

History: En. Sec. 6, Ch. 430, L. 1971.

41-1423. Administration by director—rules and regulations—powers.

[1] The director shall administer the provisions of this act and shall issue from time to time reasonable rules and regulations for enforcing and carrying out the provisions and purposes of this act.

(2) The director shall have power to compel the attendance of witnesses by the issuance of subpoenas, to administer oaths, and to take testimony and proofs concerning all matters pertaining to the administration of this act.

(3) The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency.

History: En. Sec. 7, Ch. 430, L. 1971.

41-1424. Conducting business without license a misdemeanor. It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this act.

History: En. Sec. 8, Ch. 430, L. 1971.

41-1425. Bond of licensee—cash deposit. Before conducting any business as an employment agency each licensee shall file with the director a surety bond in the sum of two thousand dollars (\$2,000) running to the state of Montana, for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this act or of any rule or regulation adopted by the director pursuant to section 7 [41-1423] (1) of this act.

In lieu of the surety bond required by this section the license applicant may file with the director a cash deposit or other negotiable security acceptable to the director: provided, however, if the license applicant has filed a cash deposit, the director shall deposit such funds in a special trust savings account in a commercial bank, mutual savings bank, or saving and loan association and shall pay annually to the depositor the interest derived from such account.

History: En. Sec. 9, Ch. 430, L. 1971.

41-1426. Application for license—contents. (1) Every applicant for an employment agency's license or a renewal thereof shall file with the director a written application stating the name and address of the applicant; the street and number of the building in which the business of the employment agency is to be conducted; the name of the person who is to have the general management of the office; the name under which the business of the office is to be carried on; whether or not the applicant is pecuniarily interested in the business to be carried on under the license; shall be signed by the applicant and sworn to before a notary public; and shall identify anyone holding over twenty per cent (20%)

interest in the agency. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of the corporation, and shall be signed and sworn to by the president and secretary thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. The application shall also state whether or not the applicant is, at the time of making the application, or has at any previous time been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(2) All applications for employment agency licenses shall be accompanied by a copy of the form of contract to be used between the agency and the applicant.

History: En. Sec. 10, Ch. 430, L. 1971.

41-1427. Expiration of license. An employment agency license shall expire June 30.

History: En. Sec. 11, Ch. 430, L. 1971.

41-1428. Director's consent necessary before transferring license—changes in management. No license granted pursuant to this act shall be transferable without the consent of the director. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the director. Consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question had been mentioned therein.

History: En. Sec. 12, Ch. 430, L. 1971.

41-1429. Grounds for denial, suspension, or revocation of license. The director may by order deny, suspend or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) Was previously the holder of a license issued under this act, which was revoked for cause and never reissued by the director, or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) Has been found guilty of any felony within the past five (5) years involving moral turpitude, or for any misdemeanor concerning fraud or conversion, or suffering any judgment in any civil action involving willful fraud, misrepresentation or conversion;

(3) Has made a false statement of a material fact in his application or in any data attached thereto;

(4) Has violated any provisions of this act, or failed to comply with any rule or regulation issued by the director pursuant to this act.

History: En. Sec. 13, Ch. 430, L. 1971.

41-1430. License fees. The following fees shall be charged by the director to those parties licensed as employment agencies: original applications, one hundred dollars (\$100); renewal per year, one hundred dollars (\$100); branch license, both original and renewal, one hundred

dollars (\$100); transfer of license, twenty-five dollars (\$25); approval of amended or new contracts, fifteen dollars (\$15) per contract.

History: En. Sec. 14, Ch. 430, L. 1971.

41-1431. When can agency charge fee from applicant. No employment agency shall charge or accept a fee or other consideration from an applicant without complying with the terms of a written contract as specified in section 4 [41-1420] of this act, and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

History: En. Sec. 15, Ch. 430, L. 1971.

41-1432. Return of excessive fees. Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this act or to the rules or regulations adopted pursuant to this act shall return the excessive portion of the fee within seven (7) days after receiving a demand therefor from the director.

History: En. Sec. 16, Ch. 430, L. 1971.

41-1433. Additional regulatory rules. In addition to the other provisions of this act the following rules shall govern each and every employment agency:

(1) Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency;

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment;

(3) No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee; nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee;

(4) No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation;

(5) No licensee shall refer an applicant to an employer where there is a strike or lockout at the place of proposed employment, if such licensee has knowledge that such condition exists;

(6) No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer;

(7) When an applicant is referred to the same position by two licensees, the fee shall be paid to the licensee who first contacted the applicant concerning the specific opening: provided, that he has given the

name of the employer to the applicant and has arranged an interview or submitted a resume to the employer within ten (10) days of such contract.

History: En. Sec. 17, Ch. 430, L. 1971.

41-1434. Reference to prosecuting officials for enforcement. The director may refer such evidence as may be available to him concerning violations of this act or of any rule or regulation adopted hereunder to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose, who may, in their discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this act.

History: En. Sec. 18, Ch. 430, L. 1971.

41-1435. Written assurance of discontinuance. In the enforcement of this act, the attorney general and/or any said prosecuting attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this act. Any such assurance shall be in writing and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business.

History: En. Sec. 19, Ch. 430, L. 1971.

41-1436. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this act, shall forfeit and pay a civil penalty of not more than two thousand dollars (\$2,000). For the purpose of this section the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general and/or the prosecuting attorney acting in the name of the state may petition for the recovery of civil penalties.

History: En. Sec. 20, Ch. 430, L. 1971.

41-1437. Jurisdiction over nonresidents. Personal service of any process in an action under this act may be made upon any person outside the state if such person has engaged in conduct in violation of this act which conduct has had impact in this state which this act reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state.

History: En. Sec. 21, Ch. 430, L. 1971.

41-1438. Provisions exclusive—authority of political subdivisions not affected—disposition of license fees. (1) The provisions of this act relating to the regulation of private employment agencies shall be exclusive.

(2) This act shall not be construed to affect or reduce the authority of any political subdivision of the state of Montana to provide for the licensing of private employment agencies solely for revenue purposes.

(3) All license fees shall revert to department of labor and industry to be used for administration of this act.

History: En. Sec. 22, Ch. 430, L. 1971.

Repealing Clause

Section 23 of Ch. 430, Laws 1971 read "Chapter 14, Title 41, R. C. M. 1947, is hereby repealed."

CHAPTER 16—DEPARTMENT OF LABOR AND INDUSTRY

Section 41-1603. Commissioner of labor and industry—term—salary—oath.

41-1601. Department of labor and industry created.

Cross-References

Department abolished and functions transferred, sec. 82A-1002(1).

41-1603. Commissioner of labor and industry—term—salary—oath.

The term of office of the commissioner of labor and industry shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the department of labor and industry. If the legislative assembly does not specify the maximum salary of the commissioner, any increase in the salary of the commissioner must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable monthly. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by section 1, article XIX of the Montana Constitution.

History: En. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967.

first sentence; and deleted "and execute an official bond in the amount of one thousand dollars (\$1,000)" from the end of the section.

Amendments

The 1963 amendment substituted a provision for a maximum salary of \$7,500 for a provision fixing the salary at \$6,000.

The 1965 amendment deleted an opening clause relating to the term of office of the commissioner appointed in 1951; deleted "appointed thereafter" after "commissioner of labor and industry" in the

The 1967 amendment substituted the second, third and fourth sentences for a provision in the former section fixing the maximum salary at \$7,500; and made minor changes in punctuation and phraseology.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

41-1607, 41-1608. Repealed.

Repeal

Sections 41-1607 and 41-1608 (Secs. 9, 10, Ch. 177, L. 1951; Sec. 12, Ch. 80, L. 1961), relating to the annual report of the department of labor and industry were repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

CHAPTER 17—SAFETY CODES

- Section 41-1708. Short title.
 41-1709. Definitions.
 41-1710. Employers to furnish and require safety devices and practices.
 41-1711. Employer's duty to provide and maintain safe place of employment.
 41-1712. Removal or refusal to use safety devices prohibited.
 41-1713. Board's powers—duty to establish department of safety under a safety director—rule-making power—subpoena and other powers.
 41-1714. Compelling witnesses to appear in response to subpoena—contempt.
 41-1715. Board's power to prescribe safety devices and fix and order safety standards.
 41-1716. Notice of hearing on rules and codes.
 41-1717. Order directing additions, repairs, and improvements.
 41-1718. Notice of violation of safety code, order or rule—penalties for violations—hearings—injunction authorized.
 41-1719. Time allowed for compliance with order.
 41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety.
 41-1721. Judicial review of board's orders, rules or decisions.
 41-1722. Application for rehearing of order, decision, or rule of board.
 41-1723. Application for rehearing—contents—waiver—copies to adverse parties—procedure where no adverse parties.
 41-1724. Resolution of issues on rehearing—notice—disposition.
 41-1725. Periodic inspections of hazardous places of employment—report.
 41-1726. Workmen to notify employers of safety violations—complaint to board—investigation.
 41-1727. Code-making power.
 41-1728. Variations.
 41-1729. General research and review powers of board—Power to appoint advisers.
 41-1730. Violation of safety provision—misdemeanor.
 41-1731. Public contractors subject to act.
 41-1732. Effect on existing structures and equipment.
 41-1733. Occupational health hazards.

41-1701 to 41-1707. Repealed.

Repeal

Sections 41-1701 to 41-1707 (Secs. 1 to 6, 8, Ch. 193, L. 1951), relating to safety codes of the industrial accident board,

were repealed by Sec. 30, Ch. 341, Laws 1969. For present provisions see sec. 41-1708 et seq.

41-1708. Short title. This act may be cited as the "Montana Safety Act."

History: En. Sec. 1, Ch. 341, L. 1969.

Title of Act

An act to provide a safety code for the state of Montana, establishing a department of safety, providing for a safety director to be appointed by the industrial accident board, providing that the industrial accident board have supervision over

every place of employment and full power to enforce all laws and orders concerning safety in places of employment, prescribing methods for enforcement and administration of this act; amending section 92-101, R. C. M. 1947; and repealing sections 41-1701 through 41-1707, 92-1201 through 92-1210 and 92-1214 through 92-1222, R. C. M. 1947.

41-1709. Definitions. Unless context requires otherwise, in this act:

- (1) "Board" means the industrial accident board of the state of Montana.
- (2) "Employer" is defined as in section 92-410, R. C. M. 1947.
- (3) "Code" means a standard body of rules for safety formulated, adopted and issued by the board under the provisions of this act.

(4) "Employee" and "workmen" are defined as in section 92-411, R. C. M. 1947.

(5) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

History: En. Sec. 2, Ch. 341, L. 1969.

Cross-References

Board abolished and functions transferred, sec. 82A-1005(1).

41-1710. Employers to furnish and require safety devices and practices. Every employer shall furnish a place of employment which is safe for employees therein, and shall furnish and use, and require the use of, such safety devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render the place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of employees.

History: En. Sec. 3, Ch. 341, L. 1969.

Liability for Violation

Employee of general contractor expanding paper company's facilities was properly denied right to introduce testimony, in suit against paper company, respecting minimum safety standards for construction industry as promulgated by state in-

dustrial accident board since paper company's right to oversee and co-ordinate work of independent contractors did not impose duty on company to ensure that contractor's work would be done in compliance with all various safety codes. *Hackley v. Waldorf-Horner Paper Products Co.*, 149 M 286, 425 P 2d 712.

41-1711. Employer's duty to provide and maintain safe place of employment. An employer who is the owner or lessee of any real property in this state shall not construct or cause to be constructed or maintained any place of employment that is unsafe.

Every employer who is the owner of a place of employment or lessee thereof, shall repair, and maintain the same as to render it safe.

History: En. Sec. 4, Ch. 341, L. 1969.

41-1712. Removal or refusal to use safety devices prohibited. No person shall remove, displace, damage, destroy or carry off or refuse to use any safety device or safeguard furnished and provided for his use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment, or fail to do any other thing reasonably necessary to protect the life and safety of such employees.

History: En. Sec. 5, Ch. 341, L. 1969.

41-1713. Board's powers—duty to establish department of safety under a safety director—rule-making power—subpoena and other powers. In the administration of this act the board:

(1) Is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

(2) Shall establish a department of safety under the supervision of a safety director, to be appointed by the board, to carry out the provisions of this act. The safety director shall be a person with at least two (2) years' experience or training in the field of industrial safety.

(3) May make, establish, promulgate and enforce all necessary and reasonable rules and provisions for the purpose of carrying this act into effect and in reference to the investigation of all violations of this act and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this act into effect.

(4) May on its own motion or at the request of others, subpoena witnesses, administer oaths, take depositions and fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of this state, and the board shall provide for defraying the expenses thereof.

History: En. Sec. 6, Ch. 341, L. 1969.

41-1714. Compelling witnesses to appear in response to subpoena—contempt. (1) The board or any member thereof, before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding, and ask the court to compel the witness to attend and testify or produce such papers before the board.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why he has not attended and testified or produced the papers before the board or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the board or member thereof, the court thereupon shall enter an order that the witness appear before the board or member thereof at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the order the witness shall be dealt with as for contempt of court.

History: En. Sec. 7, Ch. 341, L. 1969.

41-1715. Board's power to prescribe safety devices and fix and order safety standards. The board may, after hearing had upon its own motion or upon complaint, by safety orders, rules or otherwise:

(1) Declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law.

(2) Fix reasonable standards and prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe.

(4) Require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

History: En. Sec. 8, Ch. 341, L. 1969.

DECISIONS UNDER FORMER LAW

Employee of Independent Contractor minimum safety standards as it had specifically agreed to do. *Wells v. Stanley J. Thill & Associates, Inc.*, 153 M 28, 452 P 2d 1015.

Neither city nor its supervising engineer had duty running to employee of independent contractor doing work for city to see that contractor complied with

41-1716. Notice of hearing on rules and codes. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes, as authorized in this act, the board shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the board may deem expedient. The notice shall contain a brief statement of the time, place and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the board after the hearing.

History: En. Sec. 9, Ch. 341, L. 1969.

41-1717. Order directing additions, repairs, and improvements. Whenever the board, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe, or that the practices or methods or operations or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of the employees in such employments and place of employment, the board shall make and enter and serve

such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment. The board may in the order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in the order.

History: En. Sec. 10, Ch. 341, L. 1969.

41-1718. Notice of violation of safety code, order or rule—penalties for violations—hearings—injunction authorized. (1) The board or authorized representative thereof with the approval of the board, or the safety director, upon finding any violation of any duly promulgated safety code, order or rule involving failure to install or maintain any safety appliance, device or safeguard required by such safety order, code or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation, and when such use is prohibited shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided, or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the board, or who fails or refuses to file a report of accident as required by section 92-808, R. C. M. 1947, is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than one thousand dollars (\$1,000). The civil penalty may be imposed and collected by the board in an action brought in the name of the state of Montana in the county in which the employer resides or in which he employs workmen. Any penalty collected under this subsection shall be paid into the industrial accident administrative earmarked revenue account.

Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus or place of employment as provided for in this section may request a hearing before the board within twenty (20) days after entry of such order. The board shall then affirm, modify or revoke the order and all procedures of this act relative to entry of orders, rehearing and appeal shall apply.

In addition to all other remedies provided in this act, the board may bring an action to enjoin any violation of any duly promulgated safety order, code or rule.

History: En. Sec. 11, Ch. 341, L. 1969.

41-1719. Time allowed for compliance with order. The board shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the board for an extension of time, which the board shall grant if it finds the extension of time necessary.

History: En. Sec. 12, Ch. 341, L. 1969.

41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety. The board or authorized representative thereof, with the approval of the board, or the safety director, may order any place of employment closed, or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workmen employed therein. Upon issuance of any such order, the board or safety director shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order. Nothing in this section shall empower the safety director to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that for those employments or places of employment for which no code has been adopted and where it is found by the safety director that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen there employed, the safety director may order that portion of the plant, installation or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed four (4) hours unless such period be extended by order of the board.

History: En. Sec. 13, Ch. 341, L. 1969.

41-1721. Judicial review of board's orders, rules or decisions. (1) The orders of the board, its rules, findings and decisions, made and entered under the provisions of this act, may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within thirty (30) days after an application for rehearing is denied, or, if the application is granted, within thirty (30) days after

rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order, or decision, or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the board and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney and a copy thereof shall be served by certified mail upon the board. Within ten (10) days after the receipt of the notice, the board shall file with the clerk of court the record of proceedings before the board, including a transcript of all the evidence adduced upon the hearing and any rehearing before the board. The district court, on application for good cause shown, may extend the time within which the board shall file the record, transcript and evidence. The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the board.

(4) The appeal shall not be extended further than to determine whether or not:

(a) The board acted without or in excess of its powers, or in violation of the law;

(b) The order or decision was procured by fraud;

(c) The order, decision or rule is unreasonable;

(d) If findings of fact are made, the finding of fact supports the order or decision under review.

(5) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases.

History: En. Sec. 14, Ch. 341, L. 1969.

41-1722. Application for rehearing of order, decision, or rule of board. Any party aggrieved directly or indirectly by any final order, decision or rule of the board made or entered pursuant to this act may apply to the board within twenty (20) days after the order of the board for rehearing in respect to any matters determined or covered by such final order, decision or rule, and specified in the application, for hearing within the time and in the manner prescribed in this act.

History: En. Sec. 15, Ch. 341, L. 1969.

41-1723. Application for rehearing—contents—waiver—copies to adverse parties—procedure where no adverse parties. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision or rule is unjust or unlawful, and every issue to be considered by the board.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the mat-

ters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within ten (10) days after being served.

(4) If there are no adverse parties, the application may be heard ex parte, or the board may require the application for rehearing to be served on such parties as may be designated by the board.

History: En. Sec. 16, Ch. 341, L. 1969.

41-1724. Resolution of issues on rehearing—notice—disposition. (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the board, it may determine the same by confirming, without hearing, its previous determination, or if a rehearing is necessary to determine one or more of the issues raised, the board shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties and such other persons as the board may order.

(3) If after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the board shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted, or should be changed, the board shall abrogate, change or modify the same.

(4) An order or decision made after the rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the board.

(5) An application for rehearing is considered denied by the board unless it has been acted upon within thirty (30) days from the date of filing; provided that the board may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional thirty (30) days.

History: En. Sec. 17, Ch. 341, L. 1969.

41-1725. Periodic inspections of hazardous places of employment—report. (1) The board shall inspect from time to time all the places of employment defined in the Montana Workmen's Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the board and a copy thereof given the employer. Such report shall not be open to public inspection, or made public except on order of the board, or by the board or a member of the board in the course of a hearing or proceeding.

History: En. Sec. 18, Ch. 341, L. 1969.

41-1726. Workmen to notify employers of safety violations—complaint to board—investigation. (1) A workman shall notify his employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the workman.

(2) If the employer fails to remedy the violation, the workman may complain in writing to the board of the violation.

(3) Upon receiving the complaint the board shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant.

History: En. Sec. 19, Ch. 341, L. 1969.

41-1727. Code-making power. (1) In addition to such other powers and duties as may be conferred upon it by law, the board shall have the power to promulgate, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe. In the performance of its duties the board may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees; and others to suggest safety codes or amendments thereto. All such safety codes and rules shall, when adopted, be not inconsistent with the then existing widely accepted codes of such engineering bodies as the American Society of Mechanical Engineers, the American Standards Association, the American Society of Safety Engineers, the United States of America Standards Institute, the National Fire Protection Association, and, in addition, agencies of the federal government with responsibilities for administering worker safety programs, and other accepted codes. Any amendments made to such codes by the board shall be such that when amended such code shall be consistent with the widely accepted safety codes as then existing. All codes and all amendments thereto and repeals thereof shall take effect thirty (30) days after certified copies thereof shall be filed in the office of the secretary of state.

(2) Every code adopted and every amendment or repeal thereof shall be published in such manner as the board may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the board under the provisions of this act, together with the dates of adoption thereof, shall be published from time to time.

History: En. Sec. 20, Ch. 341, L. 1969.

41-1728. Variations. Any employer may consult with the board for advice and assistance in complying with the provisions of this act or any codes adopted hereunder. In case of practical difficulties, the board may grant variations from particular provisions of the code and permit the use of other or different devices or methods; provided, however, that such variations shall be granted only when it is clear that the reasonable safety of the workers in said plant or place of employment is not thereby endangered. In any case where the board shall decline or refuse to grant

any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this act. A properly indexed record of all variations made shall be kept in the office of the board and be open to public inspection.

History: En. Sec. 21, Ch. 341, L. 1969.

41-1729. General research and review powers of board—power to appoint advisers. The board may: (1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(a) Research, conferences, lectures and uses of public communications media,

(b) Collection and dissemination of accident statistics, and

(c) Development of staff competent in the review of safety codes.

(2) Appoint advisers who shall be compensated by the board if necessary, and who shall assist the board in establishing standards of safety. The board may adopt and incorporate in its orders such safety recommendations as it may receive from such advisers.

History: En. Sec. 22, Ch. 341, L. 1969.

41-1730. Violation of safety provision—misdemeanor. In addition to all other penalties herein provided: Every employer, workman or other person, who, either individually or acting as an officer, agent, or employee of a corporation or other person, violates any safety provision of this act, or who, directly or indirectly, knowingly induces another to do so is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 341, L. 1969.

41-1731. Public contractors subject to act. Every contractor performing services for the state of Montana or any political subdivision thereof, shall be required to comply with the safety rules, codes and provisions of this act, as a part of his contract.

History: En. Sec. 24, Ch. 341, L. 1969.

41-1732. Effect on existing structures and equipment. Nothing contained in this act shall prevent the use of existing buildings, structures, and equipment during their lifetime when they are maintained in good condition, are properly safeguarded, and conform to the applicable safety standards required by Montana safety codes effective prior to the effective date of this act, and provided that replacements and alterations shall conform to all provisions of this act.

History: En. Sec. 25, Ch. 341, L. 1969.

Compiler's Notes

Chapter 341, Laws 1969 took effect July 1, 1969.

41-1733. Occupational health hazards. The board shall report occupational health hazards discovered in its investigations and inspection of places of employment to the state board of health and shall co-oper-

ate with the state board of health in carrying out its duties as specified in Title 69, chapter 42, R. C. M. 1947.

History: En. Sec. 26, Ch. 341, L. 1969.

Separability Clause

Section 27 of Ch. 341, Laws 1969 read
"If any of the provisions of this act are declared or held to be invalid or unconsti-

tutional, such holding shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so held to be unconstitutional or invalid."

CHAPTER 19—WINTER WORK PROGRAMS

- Section 41-1901. Definition of terms.
41-1902. Municipal winter work committees authorized—composition and appointment of members.
41-1903. Terms of work committee members—no compensation.
41-1904. Meetings and officers of work committee.
41-1905. Promotion of winter work program.
41-1906. State employment service to co-operate.
41-1907. Minutes of work committee filed—availability to legislators.

41-1901. Definition of terms. As used in this act (1) "Winter work program" means a program to promote and encourage the accomplishment of work that would alleviate the rolls of the unemployed during the winter months.

(2) "Winter work committee" is a local committee appointed to effect the program.

History: En. Sec. 1, Ch. 68, L. 1965.

Title of Act

An act concerning a winter work program.

41-1902. Municipal winter work committees authorized—composition and appointment of members. The mayor of any municipality may appoint a winter work committee composed of at least five (5) members. The members shall be from various economic groups including labor, industry, business, welfare and news media. In municipalities where the economic groups are represented by organizations, the mayor shall give notice to each organization that he is going to make the appointments and shall set a date by which names must be submitted. On the date set for submittal, he shall select one member from each of the economic groups.

History: En. Sec. 2, Ch. 68, L. 1965.

41-1903. Terms of work committee members—no compensation. Original appointments shall be for five (5), four (4), three (3), two (2) and one (1) years. The original terms shall be determined by lot. After the original appointments have expired, terms shall be for five (5) years. There shall be no compensation for service on this committee.

History: En. Sec. 3, Ch. 68, L. 1965.

41-1904. Meetings and officers of work committee. The committee shall meet within ten (10) days of appointment by the mayor. They shall select a chairman and a secretary and other necessary officers. Thereafter, the committee shall meet at least quarterly and at such other times as may be necessary, convenient or desired.

History: En. Sec. 4, Ch. 68, L. 1965.

41-1905. **Promotion of winter work program.** The committee shall work through public service advertising and through public relations to promote the winter work program.

History: En. Sec. 5, Ch. 68, L. 1965.

41-1906. **State employment service to co-operate.** The employees of free public employment offices of the Montana state employment service shall co-operate with the committee.

History: En. Sec. 6, Ch. 68, L. 1965.

41-1907. **Minutes of work committee filed—availability to legislators.** Minutes of the meetings of the committee shall be filed by the secretary of the committee with the mayor of the municipality who shall keep them as other public records. Members of the legislative assembly may use these minutes to determine the employment problems of the municipalities involved.

History: En. Sec. 7, Ch. 68, L. 1965.

CHAPTER 20—RESTAURANT, BAR AND TAVERN WAGE PROTECTION ACT

- Section 41-2001. Short title.
 41-2002. Bond required of lessee.
 41-2003. Purpose of act.
 41-2004. Definition of terms.
 41-2005. Bond to be filed by lessee—amount—ownership affidavit.
 41-2006. Time of filing of bond—terms of bond—maintenance of bond required.
 41-2007. Liability of lessor and lessee for unpaid wages.
 41-2008. Lessee's business enjoined until bond filed.
 41-2009. Certification of lessee on filing of bond.
 41-2010. New or additional bond—sureties.
 41-2011. Disposition of fees.

41-2001. **Short title.** This act shall be known as the Restaurant, Bar and Tavern Wage Protection Act.

History: En. Sec. 1, Ch. 155, L. 1965.

Title of Act

An act requiring the lessee of restaurants, bars or taverns to file payroll

bonds for the protection of employees of lessees where the equipment, appliances, and other accessories necessary for the conduct of business therein at the place of business are owned by the lessor.

41-2002. **Bond required of lessee.** From and after the effective date of this act, it shall be unlawful for any person to lease a premise to be used as the place for conducting a restaurant, bar or tavern business, where the equipment, appliances and other accessories necessary for the conduct of business therein are owned by the lessor, without first having filed with the commissioner of labor and industry a bond in accordance with the requirements of section 5 [41-2005] of this act.

History: En. Sec. 2, Ch. 155, L. 1965.

41-2003. **Purpose of act.** The purpose of this act is to protect employees of lessees conducting business as restaurants, bars and taverns employed under the circumstances of ownership of the equipment, ap-

pliances and other accessories as outlined in section 2 [41-2002] of this act and to assure the payment of wages to such employees in the event the lessee ceases operation of his business and is unable to pay the wages due and owing to his employees.

History: En. Sec. 3, Ch. 155, L. 1965.

41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the following meaning: (1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessor" means one who has leased premises, equipment, appliances or accessories for a definite or indefinite period, by a written or parol lease.

(4) "Lessee" means one to whom a lease is made.

(5) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(6) "Liquor" means and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor, which contains more than one per centum (1 %) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 4-302, Revised Codes of Montana, 1947.

(7) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4 %) alcohol by weight.

(8) "Employee" means a person who works for wages or salary in the service of an employer.

(9) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(10) "Equipment" means the articles, furnishings, supplies and apparatus used in a business.

(11) "Appliances" means all devices and apparatus used in the conduct of business.

(12) "Accessories" means those articles, furnishings, supplies, devices and other apparatus which are used in and contribute in a secondary way, along with the appliances and equipment, to the conduct of a business.

History: En. Sec. 4, Ch. 155, L. 1965.

41-2005. Bond to be filed by lessee—amount—ownership affidavit. Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar or tavern, or who leases equipment, appliances or accessories for such purpose, is hereby required to file a bond equal to at least double the amount of the semi-monthly payroll with the commissioner of labor and industry and an

affidavit showing the name of the owner of the equipment, appliances and other accessories necessary for the conduct of business therein.

History: En. Sec. 5, Ch. 155, L. 1965.

41-2006. Time of filing of bond—terms of bond—maintenance of bond required. The bond and affidavit required by section 5 [41-2005] of this act shall be filed with the commissioner of labor and industry by July 1 and February 1 of each year. The state of Montana shall be named as the obligee therein with good and sufficient sureties to be approved by the attorney general of the state of Montana. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee therein as provided in section 9 [41-2009] of this act until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided. Such bond shall be conditioned to assure that in any lease transaction of the type referred to in section 2 [41-2002] of this act the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business, for any reason, and is unable to pay the wages due and owing the employees.

History: En. Sec. 6, Ch. 155, L. 1965.

41-2007. Liability of lessor and lessee for unpaid wages. Upon non-payment of wages, if no bond has been filed as provided for in this act, the employees of the lessee may recover from either the lessor or lessee who shall be jointly and severally liable in accordance with the provisions of sections 41-1302 and 41-1306, Revised Codes of Montana, 1947.

History: En. Sec. 7, Ch. 155, L. 1965.

41-2008. Lessee's business enjoined until bond filed. If any person engages in the restaurant, bar or tavern business, as lessee, without having first filed a bond as required by section 5 [41-2005] of this act, the attorney general of the state of Montana, the commissioner of labor and industry of the state of Montana, or any citizen, group of citizens or any association in the county where the violator conducts his business may institute an action to enjoin such person from engaging in the business until compliance with this act has been met.

History: En. Sec. 8, Ch. 155, L. 1965.

41-2009. Certification of lessee on filing of bond. Upon filing a bond as required by section 5 [41-2005] of this act and after payment of two (\$2) dollars, as application fee, the commissioner of labor and industry shall issue to the lessee applying a certificate stating that the lessee is duly bonded and entitled to conduct a restaurant, bar or tavern business in the state of Montana.

History: En. Sec. 9, Ch. 155, L. 1965.

41-2010. New or additional bond—sureties. The commissioner of labor and industry may require a new bond or a bond of a greater amount than double the semimonthly payroll whenever the commissioner deems

it necessary for the protection of the employees of a lessee. The commissioner may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided.

History: En. Sec. 10, Ch. 155, L. 1965.

41-2111. Disposition of fees. All fees and moneys collected pursuant to section 9 [41-2009] of this act shall be credited to a special account to be known as the restaurant, bar and tavern employees wage protection fund, and shall be used by the commissioner of labor and industry to carry out the provisions of this act.

History: En. Sec. 11, Ch. 155, L. 1965.

Separability Clause

Section 12 of Ch. 155, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 21—LABOR SAFETY STUDY COMMISSION

Section 41-2101. Intent and purpose of act.

41-2102. Appointment of commission—scope of work.

41-2103. Composition of commission.

41-2104. Distribution of proposed changes to industry and legislature.

41-2105. Legislative adoption required.

41-2106. Employment of secretary and research services by commission.

41-2107. Reimbursement of commission members.

41-2108. Adoption of rules—records.

41-2101. Intent and purpose of act. The intent and purpose of this act is to establish a commission to suggest changes in the laws of Montana for the purpose of governing the safety provisions in places of employment and to regulate the conduct of the employer-employee relationship in matters pertaining to safety in order to insure, as much as possible, safe places of employment and to protect and preserve the physical health and well-being of employees and to endeavor to cut down employee accidents and to revise and modernize the safety laws in order to promote safety in employment and speedy, effective and economical ways of administering such laws.

History: En. Sec. 1, Ch. 323, L. 1967.

Title of Act

An act authorizing and empowering the commission of labor of the state of Montana to recommend changes in the laws of Montana relating to safety codes, safety positions, and general safety laws; creating a commission to prepare suggested changes in safety laws and propose new laws and propose new recommendations as to the position of safety; prescribing the membership and the powers and duties of said commission; providing for the employment of a secretary-stenographer of

the commission and employment of research facilities, if deemed necessary; providing for the payment of actual travel and other expenses incurred by members of said commission in the discharge of their duties; providing that such recommended changes or new provisions in the laws of Montana governing safety codes shall be submitted to the Forty-First Legislative Assembly of the state of Montana for its consideration.

Cross-References

Commission abolished, sec. 82A-1010 (1).

41-2102. Appointment of commission—scope of work. That within thirty (30) days following the adjournment of this legislative assembly,

the governor of the state of Montana shall appoint a commission of eight (8) persons, which commission shall meet and organize itself within thirty (30) days following appointment; and which commission shall make a complete study, consider and prepare suggested changes in the safety codes of Montana.

History: En. Sec. 2, Ch. 323, L. 1967.

41-2103. Composition of commission. The commission shall be composed of the commissioner of labor as its chairman, two representatives to be selected from industry, two representatives to be selected from labor, the chairman of the industrial accident board, or his designated representative, a member of the medical profession, and a member of the bar association of Montana.

History: En. Sec. 3, Ch. 323, L. 1967.

41-2104. Distribution of proposed changes to industry and legislature. The commission so appointed shall prepare its suggested changes as well as to distribute copies to industry and labor for their consideration and suggestions as they may submit to the commission. Such recommended changes or new provisions in the laws of Montana governing safety codes shall be submitted to the Forty-First Legislative Assembly of the state of Montana for its consideration.

History: En. Sec. 4, Ch. 323, L. 1967.

Cross-References

Montana Safety Act, sec. 41-1708 et seq.

41-2105. Legislative adoption required. Any suggested changes promulgated under this act shall be effective only upon adoption by the legislature.

History: En. Sec. 5, Ch. 323, L. 1967.

41-2106. Employment of secretary and research services by commission. The said commission may from time to time employ a secretary-stenographer, as it deems necessary, to assist in its work, and shall fix the compensation of such secretary-stenographer. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

History: En. Sec. 6, Ch. 323, L. 1967.

41-2107. Reimbursement of commission members. Members of said commission shall serve without compensation but shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

History: En. Sec. 7, Ch. 323, L. 1967.

41-2108. Adoption of rules—records. The commission is empowered to adopt rules for its own procedure, and to make all arrangements for its meetings, and to carry out the purpose for which it is created. The commission is directed to keep accurate records of its activities and proceedings.

History: En. Sec. 8, Ch. 323, L. 1967.

Separability Clause

Section 9 of Ch. 323, Laws 1967 read
"If any sentence, section, clause, or

phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid."

Repealing Clause

Section 10 of Ch. 323, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 323, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 3, 1967.

CHAPTER 22—NURSES—EMPLOYMENT PRACTICES

- Section 41-2201. Purpose of act.
 41-2202. Definitions.
 41-2203. Improper employment practices.
 41-2204. Bargaining units—determination by mutual consent or application to board.
 41-2205. Proof of status as bargaining unit.
 41-2206. Determination of question on status of bargaining unit—petition—election—redetermination.
 41-2207. Duties of board relating to bargaining unit determinations.
 41-2208. Proceedings to restrain improper employment practices—other relief—appeal.
 41-2209. Unlawful strikes.

41-2201. Purpose of act. The purpose of this act is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state of Montana, and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: En. Sec. 1, Ch. 320, L. 1969.

Title of Act

An act providing for the adoption of orderly procedures for establishing desirable employment practices for registered

professional and licensed practical nurses employed in health care facilities; establishing procedures for developing employment standards; providing rule-making authority to the state board of health.

41-2202. Definitions. As used in this act, unless the context clearly requires otherwise:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications, determined pursuant to section 4 [41-2204] of this act.

(2) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility, but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(3) "Health care facility" means a hospital or nursing home, or other agency or establishment, employing employees as defined in this act, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals or both.

(4) "Board" or "board of health" means the state board of health.

(5) "Strike" shall mean any work stoppage caused by the employees of a health care facility as defined in section 2 [subdivision (3) of this section] of this act, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: En. Sec. 2, Ch. 320, L. 1969.

41-2203. Improper employment practices. It is an improper employment practice for a health care facility to do one or more of the following:

(1) Interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(3) Discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing, and have their representative sign, any agreement arrived at through negotiations and discussion;

(5) Unilaterally exclude from work or prevent from working, or discharge any one or more employees, when the purpose of such action is in whole or in part, to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

History: En. Sec. 3, Ch. 320, L. 1969.

41-2204. Bargaining units—determination by mutual consent or application to board. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility, or representatives of employees may apply to the state board of health and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

History: En. Sec. 4, Ch. 320, L. 1969.

41-2205. Proof of status as bargaining unit. An employee organization is considered to be the duly designated representative of all the

employees in an appropriate unit for the purpose of section 3 [41-2203] of this act if it can show evidence that bargaining rights have been assigned to it by a majority of the employees in that unit.

History: En. Sec. 5, Ch. 320, L. 1969.

41-2206. Determination of question on status of bargaining unit—petition—election—redetermination. (1) If the right of an employee organization to represent the employees in an appropriate unit is questioned by the authority in charge of the facility employing the employees, the employee organization may petition the board of health for a determination. The board of health, or his representative, shall investigate and determine the composition of an appropriate unit, if such determination has not previously been made under section 4 [41-2204] of this act, and shall determine the representative, if any, designated to represent the employees in the appropriate unit.

(2) An employee organization found by the state board of health to be authorized by at least thirty per cent (30%) of the employees in an appropriate unit may apply for an election by secret ballot to determine its right to represent the employees in that unit. If more than one employee organization claims to represent employees in that unit, the state board of health may conduct an election by secret ballot to determine which is authorized to represent the unit. If any employee organization receives a majority of the valid votes cast at the election, it is considered to be authorized to represent all the employees in that unit for the purpose of section 3 [41-2203] of this act.

(3) A determination under this section remains in effect for at least one (1) year and until either the health care facility or an employee organization shall apply for a redetermination.

History: En. Sec. 6, Ch. 320, L. 1969.

41-2207. Duties of board relating to bargaining unit determinations. The board of health may: (1) Set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under subsection 2, section 4 [41-2204], or subsection 1, section 6 [41-2206] of this act.

(2) Determine, on its own motion, by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units. When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the board may make such determination on the basis of such general classification. The health care facility or employee organization may, within thirty (30) days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification and hearing shall be held on such petition.

(3) Adopt and promulgate rules and regulations as to times and places for hearing and notice thereof so as to provide adequate notice

and opportunity to be heard to all interested parties; as to elections; and so as to carry into effect the provisions of this act.

History: En. Sec. 7, Ch. 320, L. 1969.

Cross-References

Board functions transferred to department of labor and industry, sec. 82A-1003 (1).

41-2208. Proceedings to restrain improper employment practices—other relief—appeal. The board of health, a health care facility or an employee organization qualified to apply for an election under section 6 [41-2206] of this act may, in the name of its members, or in its name, institute proceedings to restrain the commission of any improper practice listed in section 3 [41-2203] of this act or appeal from any determination by the board. The proceeding may be instituted in the district court for any county in which the health care facility does business. The court in such an action may grant mandatory or prohibitory relief, or, on appeal, adjudicate whether the board has acted in abuse of discretion or upon arbitrary or discriminatory rules or regulations, in which event the court may reverse or modify such determination.

History: En. Sec. 8, Ch. 320, L. 1969.

41-2209. Unlawful strikes. It shall be unlawful for any employee of a health care facility as defined in section 2 [41-2202] of this act to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility as defined in section 2 [41-2202] of this act or their duly elected representative must give the health care facility thirty (30) days written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969.

Separability Clause

Section 10 of Ch. 320, Laws 1969 read "This act shall be severable, and should

any part or provision hereof be held to be unconstitutional such declaration will not invalidate the remaining provisions hereof."

CHAPTER 23—MINIMUM WAGES AND HOURS

Section 41-2301. Declaration of policy.

41-2302. Definitions.

41-2303. Compensation.

41-2304. Exclusions.

41-2305. Regulations.

41-2306. Enforcement.

41-2307. Provisions cumulative.

41-2301. Declaration of policy. It is declared to be the policy of this act (1) to establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being; (2) to safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards which do not provide such

adequate standards of living; and (3) to sustain purchasing power and increase employment opportunities.

History: En. Sec. 1, Ch. 417, L. 1971.

Title of Act

An act to establish minimum wages and

hours for employees in the state of Montana; delegating to the commissioner of labor the duty of administering the act; and providing enforcement.

41-2302. Definitions. (a) As used in this act, "commissioner" means the commissioner of labor and industry.

(b) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such allowance as may be permitted by regulations of the commissioner under section 5 [41-2305] of this act. The term "wage" includes the reasonable cost to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees; provided however, that in no case shall such inclusion exceed an amount equal to forty per cent (40%) of the total wage paid by such employer to such employee.

(c) "Employ" means to suffer or permit to work.

(d) "Employee" includes any individual employed by an employer.

(e) "Occupation" means any occupation, service, trade, business, industry or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(f) "Farm worker" means any person employed to do any service performed on a farm or ranch.

(g) "Farm or ranch" shall mean any endeavor primarily engaged in cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

History: En. Sec. 2, Ch. 417, L. 1971.

41-2303. Compensation. (a) Except as may otherwise be provided pursuant to this act, every employer shall pay to each of his employees wages at a rate not less than one dollar sixty cents (\$1.60) an hour, save and except for farm workers as herein defined and students employed at an amusement or recreational establishment that operates on a seasonal basis, who shall be compensated at not less than the following rates:

(1) one dollar twenty cents (\$1.20) an hour for the first year from the effective date of this act.

(2) one dollar forty cents (\$1.40) an hour for the second year from the effective date of this act.

(3) one dollar sixty cents (\$1.60) an hour for the third year from the effective date of this act and thereafter.

(b) No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives

compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half ($1\frac{1}{2}$) times the hourly wage rate at which he is employed. No overtime provision shall apply for farm workers. Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging or other facilities shall not employ said students for a work week longer than forty-eight (48) hours, unless such students receive compensation for their employment in excess of forty-eight (48) hours in a work week at a rate of not less than one and one-half ($1\frac{1}{2}$) times the hourly wage rate at which they are employed.

(c) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of eight hours per day and other seasonal periods requiring working hours substantially less than eight hours per day the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to: (1) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him. The total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked, or (2) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than the following rates:

(a) two hundred eighty dollars (\$280) a month for the first year from the effective date of this act,

(b) three hundred twenty-five dollars (\$325) a month for the second year from the effective date of this act,

(c) three hundred seventy-five dollars (\$375) a month for the third year from the effective date of this act.

History: En. Sec. 3, Ch. 417, L. 1971.

41-2304. Exclusions. The provisions of section 3 [41-2303] of this act shall not apply with respect to:

(a) Students participating in a distributive education program established under the auspices of an accredited educational agency.

(b) Persons employed in private homes whose duties consist of menial chores such as baby sitting, mowing lawns, cleaning sidewalks.

(c) Persons employed directly by the head of a household to care for children dependent upon the head of the household.

(d) Immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a "dependent."

(e) Any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis.

(f) Handicapped workers (1) engaged in work which is incidental to training or evaluation programs or (2) whose earning capacity is so severely impaired that they are unable to engage in competitive employment.

(g) Apprentices or learners who may be exempted by the commissioner for a period not to exceed thirty (30) days of their employment.

(h) Learners under the age of nineteen (19) who are employed as farm workers, provided that such exclusion shall not exceed a period of one hundred eighty (180) days from their initial date of employment and, further provided that during this exclusion period wages paid such learners may not be less than fifty per cent (50%) of the minimum wage rate established in this act.

(i) Retired or semi-retired persons performing part-time incidental work as a condition of their residence on a farm or ranch.

(j) Any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner.

(k) Any individual employed by the United States of America.

History: En. Sec. 4, Ch. 417, L. 1971.

41-2305. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this act. Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner who shall thereupon set such matter for hearing in the county of residence of such protestant within thirty (30) days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify.

History: En. Sec. 5, Ch. 417, L. 1971.

41-2306. Enforcement. Enforcement of this act shall be treated as a wage claim action and shall be in accordance with sections 41-1301 through 41-1324, R. C. M. 1947, as amended.

History: En. Sec. 6, Ch. 417, L. 1971.

41-2307. Provisions cumulative. The provisions of this act shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries, but shall not apply to employees covered by the Fair Labor Standards Act.

History: En. Sec. 7, Ch. 417, L. 1971.

TITLE 42—LANDLORD AND TENANT—HIRING

CHAPTER 1—HIRING—IN GENERAL

42-105. (7734) Must repair injuries, etc.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

CHAPTER 2—HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY

42-201. (7741) Lessor to make dwelling house fit for its purpose.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

42-203. (7743) Term of hiring when no limit is fixed.

Construction of Oral Farm Lease

Judgment for tenant in action for construction of an oral farm lease was reversed and the case was remanded for a new trial where the evidence was insufficient to show either a mutual agreement or usage and the record was completely confused as to when the lease commenced. Enott v. Hinkle, 140 M 206, 369 P 2d 413, 414.

Notice to Quit

Landlord could not maintain an action for unlawful detainer where notice to quit was not given to tenant thirty days prior to expiration of year to year tenancy. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 91.

Oral Lease

Under this section it is possible to have an oral lease for at least one year without an expression as to time therein. This is consistent with section 13-606, statute of frauds, which voids an oral agreement for the leasing of realty of a period longer than one year. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

Entry by a tenant under an invalid oral lease may create a tenancy from year to year, month to month, or a tenancy at will depending upon the circumstances. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

42-205. (7745) Renewal of lease by lessee's continued possession.

Notice to Quit

Where notice to quit was not given by landlord to tenant thirty days prior to

Presumption as to Term

When tenant, pursuant to an oral agreement, entered into possession of property on April 1, 1957 to conduct a meat processing and selling business, his hiring of the property was presumed to be for one year from its commencement. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

The presumption that hiring is to be for one year is a rebuttable presumption. If the presumption is not controverted, the facts must be found according to the presumption. If it is controverted, the presumption must be given weight as evidence. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 90.

Tenancy from Month to Month

Payment of a monthly rental does not compel the conclusion that a tenancy is from month to month where other facts indicate to the contrary. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87 90.

Tenancy from Year to Year

Where tenant hired property for meat business under an oral agreement the tenancy was initially for a year with implied renewals for one year resulting in a tenancy from year to year. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 90.

expiration of year to year tenancy, tenancy was deemed to be renewed for another year and unlawful detainer action

could not be maintained by landlord. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

Tenancy from Year to Year

Where property was hired for meat

business under section 42-203 the tenancy was initially for a year with implied renewal for one year resulting in a tenancy from year to year. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

42-206. (7746) Notice to quit.

Time for Giving Notice

An action in unlawful detainer cannot be maintained under section 93-9703 if the tenant is lawfully in possession under a tenancy from year to year without first

giving notice thirty days prior to the anniversary date of the tenancy. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

- Chapter 1. Senatorial, representative and congressional districts, 43-106.3 to 43-106.5, 43-107.
2. The legislative assembly—its composition, organization, officers and employees, 43-206.1 to 43-208, 43-215 to 43-218.
3. The powers, duties and compensation of members, officers and employees of the legislative assembly, 43-310.
8. Lobbying, 43-803.
9. Legislative proceedings—dissemination, 43-902.
10. Fiscal notes in legislative bills, 43-1001 to 43-1006.
11. Legislative fiscal review committee, 43-1101 to 43-1108.

CHAPTER 1—SENATORIAL, REPRESENTATIVE AND CONGRESSIONAL DISTRICTS

- Section 43-106.3. Number of senators—senatorial districts and apportionment.
- 43-106.4. Terms of office of senators.
- 43-106.5. Number of representatives—representative districts and apportionment.
- 43-107. Congressional districts.

43-101 to 43-106. (42 to 47) Repealed.

Repeal
These sections (Secs. 110 to 112, Pol. C. 1895; Sec. 2, Ch. 38, L. 1911; Sec. 1, Ch. 6, L. 1921; Sec. 2, Ch. 192, L. 1921; Sec. 1, Ch. 144, L. 1939; Secs. 1 to 4, Ch. 37, L. 1941; Secs. 1, 2, Ch. 191, L. 1951; Secs. 1, 2, Ch. 233, L. 1961), relating to apportionment of legislative representation, were repealed by Sec. 13, Ch. 194, Laws 1967.

43-106.1, 43-106.2. Repealed.

Repeal
Sections 43-106.1, 43-106.2 (Secs. 1, 2, Ch. 194, L. 1967), relating to legislative apportionment, were repealed by Sec. 5, Ch. 3, Ex. Laws 1971.

43-106.3. Number of senators—senatorial districts and apportionment.
The senate of the legislative assembly shall consist of fifty-five (55) members. The senatorial districts and the number of senators elected from each district are as follows:

Senatorial District No.	Number of Senators	District Consists of County or Counties
1	1	Carter, Fallon, Wibaux, Powder River
2	1	Dawson
3	1	Richland and McCone
4	1	Roosevelt
5	2	Valley, Daniels, Sheridan
6	1	Rosebud, Treasure, Garfield, Prairie
7	1	Custer
8	1	Big Horn
9	6	Yellowstone

Senatorial District Number	Number of Senators	District Consists of County or Counties
10	1	Phillips, Blaine
11	2	Fergus, Judith Basin, Chouteau, Petroleum
12	1	Musselshell, Golden Valley, Wheatland, Sweetgrass
13	1	Carbon, Stillwater
14	1	Park
15	3	Gallatin
16	1	Jefferson, Broadwater, Meagher
17	6	Cascade
18	2	Hill, Liberty, Toole
19	1	Pondera, Teton
20	3	Lewis and Clark
21	2	Deer Lodge, Powell, Granite
22	3	Silver Bow
23	1	Beaverhead, Madison
24	1	Ravalli
25	4	Missoula
26	1	Lake
27	1	Glacier
28	3	Flathead
29	2	Lincoln, Sanders, Mineral

History: En. Sec. 1, Ch. 3, Ex. L. 1971.

Title of Act

An act to apportion the legislative as-

sembly according to the 1970 federal census; and repealing sections 43-106.1 and 43-106.2, R. C. M., 1947; and providing an effective date.

DECISIONS UNDER FORMER LAW

Unconstitutionality

Former sections 43-101 to 43-105 were unconstitutional in that they violated the Equal Protection Clause of the Four-

teenth Amendment to the United States Constitution. *Herweg v. Thirty-Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

43-106.4. Terms of office of senators. The senators shall continue to be elected for the term of four years, and they shall continue to be divided into two classes, with terms concluding in alternate biennials. The senators in districts 11, 18 and 29 shall all be elected at the general election in 1972 and, pursuant to the regulations to be promulgated by the secretary of state, draw lots for the purpose of determining which of said elected senators of said districts shall serve for four (4) years and which shall serve for two (2) years; provided, however, that in districts 15 and 20 the holdover senator shall serve out the term to which he was elected. The new senator in district 15 and 20 shall serve for a two-year term upon his or her first election in 1972. An election for a four-year term for senator shall be held in districts 1 and 6 at the next general election. In districts 8 and 19 the present terms of office of those

senators shall not be affected. The term of those senators not specifically named above shall not be affected and shall continue until termination of the present term.

History: En. Sec. 2, Ch. 3, Ex. L. 1971.

Separability Clause

Section 3 of Ch. 3, Ex. Laws 1971 read "If any clause, sentence, paragraph, sec-

tion, or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act."

43-106.5. Number of representatives—representative districts and apportionment. The house of representatives of the legislative assembly shall consist of one hundred four (104) members. The representatives elected from each district are as follows:

Representative District No.	Number of Representatives	District Consists of County or Counties
1	2	Carter, Fallon, Wibaux, Prairie, Powder River
2	2	Roosevelt, McCone
3	3	Richland, Dawson
4	3	Valley, Daniels, Sheridan
5	3	Petroleum, Garfield, Rosebud, Treasure, Big Horn
6	2	Custer
7	13	Yellowstone
8	2	Phillips, Blaine
9	3	Chouteau, Judith Basin, Fergus
10	1	Wheatland, Golden Valley, Musselshell
11	2	Carbon, Stillwater, Sweetgrass
12	3	Jefferson, Broadwater, Meagher, Park
13	5	Gallatin
14	12	Cascade
15	3	Hill, Liberty
16	3	Glacier, Toole
17	1	Pondera
18	1	Teton
19	5	Lewis and Clark
20	1	Powell
21	3	Granite, Deer Lodge
22	6	Silver Bow
23	2	Beaverhead, Madison
24	2	Ravalli
25	9	Missoula
26	2	Lake
27	6	Flathead
28	4	Lincoln, Sanders, Mineral

History: En. Sec. 4, Ch. 3, Ex. L. 1971.

Repealing Clause

Section 5 of Ch. 3, Ex. Laws 1971 read "Sections 43-106.1 and 43-106.2, R. C. M., 1947, are repealed."

Effective Date

Section 6 of Ch. 3, Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved April 6, 1971.

43-107. (48) Congressional districts. The counties of Beaverhead, Broadwater, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, Silver Bow, Glacier, Toole, Liberty, Pondera, Meagher, and Park shall constitute the first congressional district of the state. The counties of Big Horn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Rosebud, Roosevelt, Sheridan, Stillwater, Sweet Grass, Teton, Treasure, Valley, Wheatland, Wibaux and Yellowstone shall constitute the second congressional district of the state.

Whenever any county is created, comprised partly of the territory of both such districts, said county shall belong to and become a part of the district to which major portion of the territory of said county belonged and was a part prior to the creation of such new county.

History: Ap. p. Sec. 120, Pol. C. 1895; re-en. Sec. 47, Rev. C. 1907; amd. Sec. 1, Ch. 44, L. 1917; re-en. Sec. 48, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1945; amd. Sec. 1, Ch. 124, L. 1967; amd. Sec. 1, Ch. 187, L. 1971.

Amendments

The 1967 amendment deleted prelim-

inary and generalized descriptions of the districts; and transferred Glacier, Toole, Liberty, Pondera, Teton, Meagher and Park counties from the second congressional district to the first congressional district.

The 1971 amendment transferred Teton County from the first congressional district to the second congressional district.

DECISIONS UNDER FORMER LAW

Unconstitutionality

Section 43-107, prior to the 1967 amendment, was unconstitutional in that it violated the Equal Protection Clause

of the Fourteenth Amendment of the United States Constitution. *Herweg v. Thirty-Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

CHAPTER 2—THE LEGISLATIVE ASSEMBLY—ITS COMPOSITION, ORGANIZATION, OFFICERS AND EMPLOYEES

Section 43-206.1. Rosters prepared from election records.

43-207. Senate, organization of.

43-208. House of representatives, organization of.

43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting.

43-216. Alternate method of selection—failure of one candidate to receive majority vote.

43-217. "Vacancy" defined.

43-218. Pre-session caucus—house appropriation and senate finance and claims committee member—per diem and expenses.

43-203, 43-204. (53, 54) Repealed.

Repeal

These sections (Secs. 153, 154, Pol. C. 1895), relating to the election of senators,

were repealed by Sec. 13, Ch. 194, Laws 1967.

43-206. (56) Repealed.**Repeal**

Section 43-206 (Sec. 1, p. 89, L. 1885; Sec. 161, Pol. C. 1895), making certificate

of election prima facie evidence of right to seat, was repealed by Sec. 4, Ch. 18, Laws 1969.

43-206.1. Rosters prepared from election records. The secretary of state shall prepare certified rosters from the official election records on file in his office for use in the organization of the senate and house of representatives.

History: En. Sec. 1, Ch. 18, L. 1969.

Title of Act

An act to provide that the secretary of state shall prepare a certified roster to be

used in the organization of both houses of the legislature; amending sections 43-207 and 43-208, R. C. M. 1947, and repealing section 43-206, R. C. M. 1947.

43-207. (57) Senate, organization of. At the hour of twelve o'clock, noon, on the day appointed for the meeting of any regular session of the legislative assembly, the president of the senate, or in case of his absence or inability, then the senior member present, must take the chair, call the senators and senators-elect to order, call over the senators from the certified roster prepared by the secretary of state, and then, from the certified roster prepared by the secretary of state, call over the senatorial districts and counties, in their order, from which members have been elected at the preceding election, and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.

History: En. H. B. No. 69, p. 103, L. 1897; re-en. Sec. 163, Pol. C. 1895; re-en. Sec. 57, Rev. C. 1907; re-en. Sec. 57, R. C. M. 1921; amd. Sec. 2, Ch. 18, L. 1969. Cal. Pol. C. Sec. 238.

Amendments

The 1969 amendment inserted "call over

* * * secretary of state" after "to order," substituted "from the certified * * * and counties" for "call over the senatorial districts" after "and then," substituted "after the same are called" for "as the same are called," before "the members-elect," and deleted "present their certificates" before "take the constitutional oath of office."

43-208. (58) House of representatives, organization of. At the time specified in section 43-207, the secretary of state, or in case of his absence or inability, then the senior member-elect present, must take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts; and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The house of representatives may thereupon, if a quorum is present, proceed to elect its officers.

History: En. Sec. 164, Pol. C. 1895; re-en. Sec. 58, Rev. C. 1907; re-en. Sec. 58, R. C. M. 1921; amd. Sec. 3, Ch. 18, L. 1969. Cal. Pol. C. Sec. 239.

Amendments

The 1969 amendment inserted "from the certified * * * secretary of state" after "and then," substituted "after the same"

for "as the same" before "are called," and deleted "present their certificates" before "take the constitutional oath of office."

Repealing Clause

Section 4 of Ch. 18, Laws 1969 read "Section 43-206, R. C. M. 1947, is repealed."

43-211 to 43-214. (61 to 64) Repealed.**Repeal**

These sections (Sec. 9, p. 90, L. 1885; Secs. 1 to 3, p. 170, L. 1891; Secs. 1, 2, Ch. 1, L. 1915; Sec. 1, Ch. 44, L. 1937; Sec. 1, Ch. 50, L. 1937; Sec. 1, Ch. 23, L. 1939;

Sec. 1, Ch. 1 and Sec. 1, Ch. 3, L. 1943), relating to officers and employees of the legislative assembly and providing for compelling attendance of legislators, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting. When a vacancy occurs, in either house of the legislative assembly, the vacancy shall be filled by appointment by the board of county commissioners, or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board. The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislative assembly, and he shall act as the presiding officer of the meeting.

History: En. Sec. 1, Ch. 179, L. 1967.

Title of Act

An act to provide that vacancies in either house of the legislative assembly shall be filled by the board or boards of county commissioners of the county or counties concerned.

Preamble

Chapter 179, Laws 1967, contained a preamble reading: "Whereas, section 45, Article V of the Montana Constitution, which provides for the filling of vacancies in the legislative assembly has been repealed by an amendment to the Montana Constitution adopted by the electorate at the November 8, 1966 general election."

43-216. Alternate method of selection—failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from a number of candidates, not exceeding the number of counties comprising the district, in accordance with rules of selection adopted by the appointing board.

History: En. Sec. 2, Ch. 179, L. 1967.

43-217. "Vacancy" defined. For the purposes of this act, "vacancy" or "vacancies" has the same meaning as prescribed in section 59-602, R.C.M. 1947.

History: En. Sec. 3, Ch. 179, L. 1967.

43-218. Pre-session caucus—house appropriation and senate finance and claims committee member—per diem and expenses. As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the legislative assembly are elected, the majority and minority parties of each house of the legislative assembly shall hold a pre-session caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees and hire any necessary employees. Members of the house appropriations committee and the senate finance and claims committee named at the caucus shall begin reviewing requests for appropriations immediately and may visit

state agencies and institutions to discuss requests. Members of these committees, except senators elected at the general election held in 1968, shall receive twenty dollars (\$20) per day for each day engaged in committee business, and all members of these committees shall be reimbursed for actual and necessary expenses incurred in their duties. Per diem and expenses shall be paid by the state controller from the appropriation for operation of the preceding legislative assembly.

History: En. Sec. 2, Ch. 274, L. 1969.

Compiler's Notes

Section 23-1814, referred to as amended in the Title of Chapter 274, Laws 1969, was repealed by Sec. 248, Ch. 368, Laws 1969 and no specific amendment of the section appeared in the text of the former Act.

Title of Act

An act to fix the mileage paid legislators traveling to and from sessions and provide that holdover senators, senators-elect, and representatives-elect of the majority and minority parties shall receive mileage for travel to and from the pre-session caucuses; to provide for a pre-session caucus; to provide that members

appointed at the caucus to the house appropriations and the senate finance and claims committee shall begin reviewing money requests immediately; to provide that members of these committees, except senators elected at the general election held in 1968, shall receive \$20 per diem for each day engaged in committee business, and all members of these committees shall be reimbursed for actual and necessary expenses incurred in their duties, all per diem and expense payments to be paid by the state controller from the appropriation for operation of the preceding legislative assembly; and to change the state canvass date to permit a caucus December 1 or earlier; amending sections 23-1814 and 43-310, R. C. M. 1947.

CHAPTER 3—THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY

Section 43-310. Per diem, mileage and expenses of members.

43-302, 43-303. (66, 67) Repealed.

Repeal

These sections (Secs. 201, 202, Pol. C. 1895), relating to the secretary of the

senate, the clerk of the house, and their assistants, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-305 to 43-309. (69 to 73) Repealed.

Repeal

These sections (Sec. 6, p. 171, L. 1891; Secs. 204 to 207, 209, Pol. C. 1895; Sec. 3, Ch. 1, L. 1915; Sec. 1, Ch. 210, L. 1943), relating to the sergeants-at-arms, the en-

grossing clerks and enrolling clerks, and other officers and employees of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-310. (74) Per diem, mileage and expenses of members. (1) Holdover members of the legislative assembly and members hereafter elected shall receive twenty dollars (\$20.00) per day, payable weekly, during the session of the legislative assembly, and nine cents (9¢) per mile for each mile of travel to and from their residences and the place of holding the session, by the nearest traveled route.

(2) Members shall also receive twenty-five dollars (\$25) per day, payable weekly during the session of the legislative assembly, as reimbursement for expenses incurred in attending the session.

(3) The majority and minority parties in each house shall hold pre-session caucuses for the purpose of preliminary organization of the

respective houses. Holdover senators, senators-elect, and representatives-elect shall receive mileage at the rate of nine cents (9¢) per mile for each mile of travel to and from their residences and the place or places of holding the pre-session caucuses.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963; amd. Sec. 1, Ch. 180, L. 1965; amd. Sec. 1, Ch. 274, L. 1969; amd. Sec. 1, Ch. 4, L. 1971. Cal. Pol. C. Sec. 266.

Amendments

The 1963 amendment increased the mileage allowance from seven to eight cents per mile.

The 1965 amendment designated the former section as subsection (1) and added subsection (2).

The 1969 amendment made subsection (1) provisions applicable to holdover

members of the legislature and increased mileage allowance from eight to nine cents per mile, and added subsection (3).

The 1971 amendment increased the reimbursement for expenses specified in subsection (2) from \$15.00 to \$25.00 per day.

Effective Date

Section 2 of Ch. 4, Laws 1971 read "This bill shall be effective for the Forty-Second Legislative Assembly and all sessions thereafter."

Temporary Provision

Chapter 1, Laws of 1971, prescribed the duties and compensation of officers and employees of the Forty-Second Legislative Assembly.

43-312 to 43-317. (76 to 78.3) Repealed.

Repeal

These sections (Secs. 222, 223, Pol. C. 1895; Sec. 3, Ch. 45, L. 1909; Sec. 1, Ch. 37, L. 1913; Secs. 4, 5, Ch. 1, L. 1915; Sec. 1, Ch. 115, L. 1917; Secs. 1 to 3, Ch. 112, L. 1927; Sec. 1, Ch. 6, L. 1935; Sec.

2, Ch. 50, L. 1937; Sec. 2, Ch. 1 and Sec. 2, Ch. 3, L. 1943), relating to the compensation of legislative officers and employees and to property of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

CHAPTER 5—STATUTES—THEIR ENACTMENT AND OPERATION—GOVERNOR'S APPROVAL OR VETO

43-514. (97) Repeal of laws creating criminal offenses, etc.

Constitutionality

This section is to be interpreted so as to preserve for prosecution all criminal offenses committed prior to repeal, in absence of an express legislative intent to contrary contained in repealing act, irre-

spective of whether charges are filed before or after such repeal; such interpretation does not violate article III, section 11 of constitution as ex post facto legislation. State ex rel. Huffman v. District Court, 154 M 201, 461 P 2d 847.

CHAPTER 8—LOBBYING

Section 43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement.

43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement. (1) Licenses—fees—eligibility. Any person of adult age and good moral character who is a citizen of the United States and otherwise qualified under this act may be licensed as a lobbyist as herein provided. The secretary of state shall provide for the form of application for license. Such application may be obtained in the office of the secretary of state and filed therein. Upon approval of such application and payment of the license fee of ten dollars (\$10.00) to the secretary of

state, a license shall be issued which shall entitle the licensee to practice lobbying on behalf of any one or more principals. Each license shall expire on December 31 of each odd-numbered year. No application shall be disapproved without affording the applicant a hearing which shall be held and decision entered within ten (10) days, of the date of filing of the application. The license fees collected by the secretary of state under this act shall be deposited by him in the state treasury.

(2) Suspension or revocation of license. Upon verified complaint in writing to the attorney general of the state of Montana charging the holder of a license with having been guilty of unprofessional conduct or with having procured his license by fraud or perjury or through error, the attorney general is hereby authorized to bring civil action in the district court for Lewis and Clark county, state of Montana, against the holder and in the name of the state as plaintiff to revoke the license. Hearing shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible and at least twenty (20) days after the filing of the charges and shall take precedence over all other matters pending before the court. If the court finds for the plaintiff judgment shall be rendered revoking the license, and the clerk of the court shall file a certified copy of the judgment with the secretary of state. The licensing authority may commence any such action on his own motion.

(3). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965.

Amendment

The 1965 amendment deleted "in a special fund to be known as the 'Lobby Li-

cense Fund' which fund is to be expended in the manner hereinafter provided" at the end of subsection (1); and deleted from subsection (2) a former fifth sentence which read: "Costs shall be paid from the 'Lobby License Fund'."

CHAPTER 9—LEGISLATIVE PROCEEDINGS—DISSEMINATION

Section 43-902. Schedule of fees.

43-902. Schedule of fees. (a). * * * [Same as parent volume.]

(b) In addition to the fee for each complete set of the proceedings specified by subsection (a) of this section, any person who requests that a set of the proceedings be mailed shall pay an additional fee to the secretary of state for each complete set that is mailed of seventy-five dollars (\$75) if a person requests that the proceedings be mailed ordinary mail and one hundred dollars (\$100) if a person requests that the proceedings be mailed air mail.

(c) Any person desiring to receive single copies of mimeographed bills, mimeographed resolutions, printed bills, printed resolutions, or amendments thereto shall pay to the clerk of the house of representatives or the secretary of the senate twenty-five cents (\$.25) per single copy.

(d) Any person desiring to receive single copies of status sheets or status of proceedings shall first pay to the clerk of the house of

representatives or the secretary of the senate ten cents (10¢) per single copy.

(e) The chief clerk of the house of representatives and the secretary of the senate shall be responsible for accounting for all moneys received by them and shall transmit such funds received to the secretary of state before 5 p.m. each weekday. Any moneys received by them during Saturday, Sunday or evening sessions of the legislative assembly shall be held by them in a safe place and transmitted to the secretary of state upon the next business day.

(f) The secretary of state shall account for all funds collected under this act and transmit such funds to the treasurer of the state of Montana, who shall credit them to the general fund.

History: En. Sec. 2, Ch. 223, L. 1959; amd. Sec. 1, Ch. 14, L. 1967; amd. Sec. 1, Ch. 5, L. 1969. and, in subsection (c), deleted references to "mimeographed memorials" and "printed memorials."

Amendments

The 1967 amendment added a new subsection (b) and designated former subsections (b) through (e) as present subsections (c) through (f).

The 1969 amendment, in subsection (b), substituted "seventy-five dollars (\$75)" for "fifty dollars (\$50)," "ordinary" for "first class" before "mail," and "one hundred dollars (\$100)" for "eighty dollars (\$80)";

Effective Dates

Section 2 of Ch. 14, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 2, 1967.

Section 2 of Ch. 5, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

CHAPTER 10—FISCAL NOTES IN LEGISLATIVE BILLS

- Section 43-1001. Committee reports to include fiscal notes—need determined on introduction of bill.
- 43-1002. Budget director to prepare note.
- 43-1003. Note referred to committee—distribution to legislators on report of bill.
- 43-1004. Contents of fiscal notes.
- 43-1005. Note requested by committee or house.
- 43-1006. Background information available to legislators.

43-1001. Committee reports to include fiscal notes—need determined on introduction of bill. All bills reported out of a committee of the legislative assembly having an effect on the revenues, expenditures or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

History: En. Sec. 1, Ch. 53, L. 1965. note in all bills having an effect on the revenues, expenditures or fiscal liability of the state.

Title of Act

An act requiring the inclusion of a fiscal

43-1002. Budget director to prepare note. The state budget director, in co-operation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return same within six (6) days.

History: En. Sec. 2, Ch. 53, L. 1965.

43-1003. Note referred to committee—distribution to legislators on report of bill. A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. If the bill is printed, the note shall be mimeographed and placed on the members' desks.

History: En. Sec. 3, Ch. 53, L. 1965.

43-1004. Contents of fiscal notes. Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

History: En. Sec. 4, Ch. 53, L. 1965.

43-1005. Note requested by committee or house. A fiscal note also may be requested on a bill by:

(1) A committee considering the bill, or

(2) A majority of the members of the house in which the bill is to be considered, at the time of second reading; providing, however, section 5 [this section] of this act shall not apply six (6) days before the close of transmittal of bills and/or shall not apply after the fifty-fourth day.

History: En. Sec. 5, Ch. 53, L. 1965.

43-1006. Background information available to legislators. The budget director shall make available on request to any member of the legislative assembly all background information used in developing a fiscal note.

History: En. Sec. 6, Ch. 53, L. 1965.

CHAPTER 11—LEGISLATIVE FISCAL REVIEW COMMITTEE

Section 43-1101. Creation of committee—composition—appointments—vacancies.

43-1102. Duties of committee.

43-1103. Powers of committee.

43-1104. Investigation of costs of state government.

43-1105. Subpoena and related powers—contempt proceedings.

43-1106. Reimbursement for expenses—per diem.

43-1107. Officers—rules of procedure—meetings—records.

43-1108. Fiscal analyst and other necessary staff.

43-1101. Creation of committee—composition—appointments—vacancies. There is hereby created a legislative fiscal review committee which shall consist of four (4) members of the house of representatives appointed by the speaker, no more than two (2) of whom shall be of the same political party; and four (4) members of the senate appointed by the committee on committees, no more than two (2) of whom shall be of the same political party. The first members of the legislative fiscal review committee shall be appointed not later than the sixtieth (60th) legislative day of the forty-first (41st) legislative session. New members of the committee shall be appointed not later than the sixtieth (60th) legislative day of each succeeding session. Any vacancy occurring when the legislative assembly is not in session shall be filled by the selection

of another member of the legislature by the remaining members of the committee.

History: En. Sec. 1, Ch. 376, L. 1969.

Title of Act

An act to create a legislative fiscal re-

view committee for the study of state government fiscal matters; specifying an immediate effective date.

43-1102. Duties of committee. The legislative fiscal review committee shall accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state as the legislative assembly, or the committee by its own initiative, shall determine relevant to issues of policy and questions of state-wide importance, including, but not limited to, investigation and study of the possibilities of effecting economy and efficiency in state government. The committee may also conduct studies inquiring into the financial administration of state government and any of its agencies, including problems of assessment and collection of taxes, and all other matters pertaining to the fiscal functions of all agencies and branches of state government.

History: En. Sec. 2, Ch. 376, L. 1969.

43-1103. Powers of committee. The legislative fiscal review committee may:

(1) Employ the services of any research agency deemed necessary to the discharge of the committee's duties;

(2) Appoint special subcommittees composed of legislators, private citizens, or both to study and inquire into any specific governmental problems, however, the work of subcommittees shall be performed under the supervision of the committee;

(3) Estimate revenue from existing and proposed taxes;

(4) Review the executive budget and budget requests of each state agency and institution including proposals for the construction of capital improvements;

(5) Make recommendations it deems desirable to the legislative assembly;

(6) Assist committees of the legislative assembly, and individual legislators, in compiling and analyzing financial information.

History: En. Sec. 3, Ch. 376, L. 1969.

43-1104. Investigation of costs of state government. The legislative fiscal review committee has authority to investigate and examine into the costs of state government activities and may examine all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: En. Sec. 4, Ch. 376, L. 1969.

43-1105. Subpoena and related powers—contempt proceedings. In the discharge of its duties, the legislative fiscal review committee shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books,

accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law in civil actions in the district court. In case of disobedience on the part of any person to comply with a subpoena issued on behalf of the committee, or of the refusal of any witness to testify on any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the legislative fiscal review committee, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court on a refusal to testify therein.

History: En. Sec. 5, Ch. 376, L. 1969.

43-1106. Reimbursement for expenses—per diem. Members of the legislative fiscal review committee and its subcommittees shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, and may also receive per diem payments as authorized by law.

History: En. Sec. 6, Ch. 376, L. 1969.

43-1107. Officers—rules of procedure—meetings—records. The legislative fiscal review committee shall organize within thirty (30) days after the passage and approval of this act by electing one (1) of its members as chairman and by the election of other officers from the membership of the committee as it may deem desirable. The committee is empowered to adopt rules of procedure and to make all arrangements for its meetings to carry out the purposes for which it is created. The committee shall keep an accurate record of its activities and proceedings.

History: En. Sec. 7, Ch. 376, L. 1969.

43-1108. Fiscal analyst and other necessary staff. A fiscal analyst and other necessary staff shall be assigned to the committee by the legislative council. The council shall fix the salaries and define the duties of all the staff personnel.

History: En. Sec. 8, Ch. 376, L. 1969.

Effective Date

Section 9 of Ch. 376, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

13-1105. Reimbursement for expenses incurred by a member of the committee in the performance of his duties shall be paid by the committee. In case of disbursement on the part of any person to the committee, a subpoena issued on behalf of the committee, or of the committee, or any witness to testify on any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of the county in which the subpoena is issued, to compel obedience by process, and in case of disobedience of the requirements of a subpoena issued by the committee, to count on a refusal to testify therein.

13-1106. Reimbursement for expenses incurred by a member of the committee in the performance of his duties shall be paid by the committee. In case of disbursement on the part of any person to the committee, a subpoena issued on behalf of the committee, or of the committee, or any witness to testify on any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of the county in which the subpoena is issued, to compel obedience by process, and in case of disobedience of the requirements of a subpoena issued by the committee, to count on a refusal to testify therein.

13-1107. The committee shall have the power to adopt rules of procedure and to make all arrangements necessary to carry out the purposes for which it is created. The committee shall keep an accurate record of its activities and proceedings, and shall submit a report of its activities and proceedings to the legislature at each session.

13-1108. The committee shall have the power to adopt rules of procedure and to make all arrangements necessary to carry out the purposes for which it is created. The committee shall keep an accurate record of its activities and proceedings, and shall submit a report of its activities and proceedings to the legislature at each session.

13-1109. The committee shall have the power to adopt rules of procedure and to make all arrangements necessary to carry out the purposes for which it is created. The committee shall keep an accurate record of its activities and proceedings, and shall submit a report of its activities and proceedings to the legislature at each session.

TITLE 44—LIBRARIES

- Chapter 1: The state library of Montana, 44-127, 44-131 to 44-139.
2. County, city and regional free libraries, 44-213, 44-214, 44-218 to 44-228.
 3. City free public libraries, Repealed—Section 12, Chapter 260, Laws of 1967.
 4. State law library, 44-403, 44-404, 44-410, 44-412.
 5. Historical society—library and museum, 44-516 to 44-529.
 6. Interstate library compact, 44-601, 44-602.

CHAPTER 1—THE STATE LIBRARY OF MONTANA

- Section 44-127. State library commission created.
- 44-131. Powers of state library commission.
- 44-132. Definitions.
- 44-133. Creation of distribution center—state library commission to make regulations.
- 44-134. Depositing of state agency publications—additional copies—inter-library loan—sale publications.
- 44-135. Depository contracts—eligibility requirements—standards.
- 44-136. List of available publications.
- 44-137. State agency lists of current publications.
- 44-138. Restriction on general public distribution.
- 44-139. Exempt state agencies and officers.

44-127. (1575.1) State library commission created. A commission is hereby created to be known as the state library commission. This commission shall consist of the librarian of the state university, the state superintendent of public instruction, ex officio member, and the three members to be appointed by the governor, who shall serve one, two and three years respectively. As these terms expire, annually thereafter one person shall be appointed, for a term of three years. The commission shall annually elect a chairman from its membership. The members of said commission shall receive no compensation for their services except their actual and necessary expenses.

History: En. Sec. 1, Ch. 184, L. 1929; amd. Sec. 1, Ch. 91, L. 1945; amd. Sec. 1; Ch. 55, L. 1961; amd. Sec. 1, Ch. 215, L. 1965.

man" after "librarian of the state university" in the second sentence; and inserted the fourth sentence.

Amendment

The 1965 amendment deleted "as chair-

Cross-References

Commission continued in department of education, sec. 82A-509.

44-129, 44-130. (1575.3, 1575.4) Repealed.

Repeal

These sections (Secs. 3, 4, Ch. 91, L. 1945; Sec. 3, Ch. 55, L. 1961), relating to

powers and duties of the state library commission, were repealed by Sec. 3, Ch. 215, Laws 1965.

44-131. Powers of state library commission. The state library commission shall have the power: (1) To give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns or regions in the state which may propose to establish libraries, as to the best means of establishing and improving such libraries;

(2) To maintain and operate the state library and make provision for its housing;

(3) To accept and to expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes;

(4) To make rules and regulations and establish standards for the administration of the state library, and for the control, distribution and lending of books and materials;

(5) To serve as the agency of the state to accept and administer any state, federal or private funds or property appropriated for or granted to it for library service or to foster libraries in the state and to establish regulations under which funds shall be dispersed;

(6) To provide library services for the blind;

(7) To furnish, by contract or otherwise, library assistance and information services to state officials, state departments and residents of those parts of the state inadequately serviced by libraries;

(8) To act as a state board of professional standards and library examiners and develop standards for public libraries and adopt rules and regulations for the certification of librarians.

History: En. Sec. 2, Ch. 215, L. 1965.

Repealing Clause

Title of Act

An act amending section 44-127, R. C. M. 1947, defining the powers and duties of the state library commission; and repealing sections 44-129 and 44-130, R. C. M. 1947.

Section 3 of Ch. 215, Laws 1965 read "Sections 44-129 and 44-130, R. C. M. 1947, are repealed."

44-132. Definitions. As used in this act:

(1) "Print" includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.

(2) "State publication" includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical or magazine issued in print, or purchased for distribution, by the state, the legislature, constitutional officers, any state department, committee or other state agency supported wholly or in part by state funds.

(3) "State agency" includes every state office, officer, department, division, bureau, board, commission and agency of the state, and, where applicable, all subdivisions of each.

History: En. Sec. 1, Ch. 261, L. 1967.

Title of Act

An act to create a state publications library distribution center as a division

of the state library and amending section 82-1916, R. C. M. 1947, relating to printing and distribution of state reports and providing for reimbursement for additional publications.

44-133. Creation of distribution center—state library commission to make regulations. There is hereby created as a division of the state library, and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment

of an orderly depository library system. To this end the state library commission shall make such rules and regulations necessary to carry out the provisions of this act.

History: En. Sec. 2, Ch. 261, L. 1967.

44-134. Depositing of state agency publications—additional copies—inter-library loan—sale publications. Every state agency shall upon release deposit at least four copies of each of its state publications with the state library for record and depository purposes. Additional copies shall also be deposited, in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide inter-library loan service to those libraries without depository status. Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications, and the state library shall also reimburse any state agency for additional publications so required, where the quantity desired will necessitate additional printing or other expense to such agency.

History: En. Sec. 3, Ch. 261, L. 1967.

Cross-Reference

Printing and publications of state agencies and offices, sec. 82-1916.

44-135. Depository contracts — eligibility requirements — standards. The center shall enter into depository contracts with any municipal or county free library, state college or state university library, the library of congress and the midwest inter-library center, and other state libraries. The requirements for eligibility to contract as a depository library shall be established by the state library commission upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, ability to preserve such publications and to make them available for public use, and also such geographical locations as will make the publications conveniently accessible to residents in all areas of the state.

History: En. Sec. 4, Ch. 261, L. 1967.

44-136. List of available publications. The center shall publish and distribute regularly to contracting depository libraries and other libraries upon request a list of available state publications.

History: En. Sec. 5, Ch. 261, L. 1967.

44-137. State agency lists of current publications. Upon request by the center, issuing state agencies shall furnish the center with a complete list of its current state publications and a copy of its mailing and/or exchange lists.

History: En. Sec. 6, Ch. 261, L. 1967.

44-138. Restriction on general public distribution. The center shall not engage in general public distribution of either state publications or lists of publications.

History: En. Sec. 7, Ch. 261, L. 1967.

44-139. Exempt state agencies and officers. This act shall not apply to nor affect the duties concerning publications distributed by, or officers of:

- (1) The state law library;
- (2) The secretary of state in connection with his duties under sections 12-317, 82-2202 (17) and 82-2203, R.C.M. 1947.

History: En. Sec. 8, Ch. 261, L. 1967.

CHAPTER 2—COUNTY, CITY AND REGIONAL FREE LIBRARIES

- Section 44-213. Participation of other governmental units.
 44-214. Board of trustees—appointment and term.
 44-218. Purpose of act in regard to free public libraries.
 44-219. Establishing public library—resolution—petition—election.
 44-220. Levying of tax—special library fund—payments upon order or warrant.
 44-221. Board of trustees—appointment—composition of board—tenure.
 44-222. Board of trustees—powers and duties.
 44-223. Board of trustees—chief librarian—personnel—compensation.
 44-224. Free use of library—exclusions—extending privileges.
 44-225. Providing library services—co-operation and merging of boards, institutions and agencies.
 44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes.
 44-227. "City" defined.
 44-228. Continued existence of all public libraries.

44-201 to 44-210. (4563 to 4572) Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 45, L. 1915; Secs. 1 to 4, Ch. 137, L. 1917; Sec. 1, Ch. 56, L. 1923; Secs. 1 to 3, Ch. 202,

L. 1943; Sec. 1, Ch. 14, L. 1949), relating to county and regional free libraries were repealed by Sec. 12, Ch. 260, Laws 1967.

44-213. Participation of other governmental units. When a joint county or regional library shall have been established, the legislative body of any government unit therein that is maintaining a library may decide, with the concurrence of the board of trustees of its library, to participate in the joint county or regional library; after which, beginning with the next fiscal year of the county, the governmental unit shall participate in the joint county or regional library and its residents shall be entitled to the benefits of the joint county or regional library, and property within its boundaries shall be subject to taxation for joint county or regional library purposes. A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred. The state board of education may contract with the government of any city or county, or the governments of both the city and the county, in which a

unit of the university of Montana is located for the establishment and operation of joint library facilities. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library facilities established pursuant to this section shall be operated and supported as provided in such contract and under this chapter.

History: En. Sec. 2, Ch. 132, L. 1939;
amd. Sec. 1, Ch. 249, L. 1963.

Effective Date

Section 2 of Ch. 249, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Amendment

The 1963 amendment added the third, fourth, and fifth sentences.

44-214. Board of trustees—appointment and term. In a joint county or regional library district the board of five trustees shall be appointed by the joint action of all the county commissioners in the district. The first appointments or elections shall be for terms of one (1), two (2), three (3), four (4), and five (5) years respectively, and thereafter a trustee shall be appointed or elected annually to serve for five (5) years. Vacancies shall be filled for unexpired terms as soon as possible in the manner in which members of the board are regularly chosen. A trustee shall not receive a salary or other compensation for services as trustee, but necessary expenses actually incurred shall be paid from the library fund. A library trustee may be removed only by vote of the legislative body. Trustees shall serve no more than two full terms in succession.

History: En. Sec. 3, Ch. 132, L. 1939;
amd. Sec. 10, Ch. 260, L. 1967.

Amendments

The 1967 amendment added the last sentence.

44-216, 44-217. Repealed.

Repeal

These sections (Secs. 5, 6, Ch. 132, L. 1939), relating to tax levies and librarians

for joint county or regional libraries, were repealed by Sec. 12, Ch. 260, Laws 1967.

44-218. Purpose of act in regard to free public libraries. It is the purpose of this act to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

History: En. Sec. 1, Ch. 260, L. 1967.

Title of Act

An act providing for the creation, maintenance and operation of public libraries in counties and cities and re-

pealing sections 44-201, 44-202, 44-203, 44-204, 44-205, 44-206, 44-207, 44-208, 44-209, 44-210, 44-216, 44-217, 44-301, 44-302, 44-303 and 11-704, R. C. M. 1947; amending section 44-214, R. C. M., 1947.

44-219. Establishing public library — resolution — petition — election. A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) By petition signed by not less than ten per centum (10%) of the resident taxpayers whose names appear upon the last completed assessment roll of the city or county being filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which they may by resolution establish a public library; the governing body shall give notice of the contemplated action in a newspaper of general circulation for two consecutive weeks giving therein the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) Upon a petition being filed with the governing body and signed by not less than five per centum (5%) of the resident taxpayers of any city or county requesting an election the governing body shall submit to a vote of the qualified electors thereof, at the next general election, the question of whether a free public library shall be established. If such a petition is submitted for a city or town, the petition must be signed by resident taxpayers of said city or town. If such a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city or town located in said county which may already have established a free public library for such city or town.

If such petition specifically asks that a special election be called, and such petition is signed by thirty-five per centum (35%) of the resident freeholders affected by such petition, then the governing body shall, upon receipt of such petition, immediately set a date for a special election, which date shall be as soon as the procedures for establishing a special election will allow.

If at such election, a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain said library, or to contract with any city or county for library service to be rendered to the inhabitants of such city, town or county.

History: En. Sec. 2, Ch. 260, L. 1967;
amd. Sec. 1, Ch. 263, L. 1969.

Amendments

The 1969 amendment substituted "any" for "either" in the introductory sentence and added subdivision (3).

44-220. Levying of tax—special library fund—payments upon order or warrant. The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax not to exceed 3 mills on the dollar upon all property in such county, which may be levied by the governing body of such county, and not to exceed 4½ mills on the dollar upon all property in such city or town, which may be levied by the governing body of such city or town, in the amount necessary to maintain adequate public library service. The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library. No money shall be paid out of the

public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor.

History: En. Sec. 3, Ch. 260, L. 1967.

44-221. Board of trustees — appointment — composition of board — tenure. Upon the establishment of a public library under the provisions of this act, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the chairman of the board of county commissioners, with the advice and consent of said board, shall appoint a board of trustees for the county library. The library board shall consist of five trustees. Not more than one member of the governing body shall be, at any one time, a member of such board. Trustees shall serve without compensation but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds. Trustees shall hold their office for five years from the date of appointment, and until their successors are appointed. Initially appointments shall be made for one, two, three, four and five year terms. Annually thereafter, there shall be appointed before the first day of July of each year in the same manner as the original appointments for a five year term, a trustee to take the place of the retiring trustee. Trustees shall serve no more than two full terms in succession. Following such appointments in July of each year, the trustees shall meet and elect a chairman and such other officers as they deem necessary, for one year terms. Vacancies in the board of trustees shall be filled for the unexpired term in the same manner as original appointments.

History: En. Sec. 4, Ch. 260, L. 1967.

44-222. Board of trustees—powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) Adopt bylaws, rules and regulations for its own transaction of business and for the government of the library, not inconsistent with law.

(2) Establish and locate a central public library and may establish branches thereof at such places as are deemed necessary.

(3) Have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library and other libraries to give and receive library service, through the boards of such regions, counties and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts.

(4) Have the power to acquire by purchase, devise, lease or otherwise, and to own and hold real and personal property, in the name of the city

of county or both as the case may be, for the use and purposes of the library, and to sell, exchange or otherwise dispose of property real or personal when no longer required by the library, and to insure the real and personal property of the library.

(5) Pay necessary expenses of members of the library staff when on business of the library.

(6) Prepare an annual budget indicating what support and maintenance of the public library will be required from public funds for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) Make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana State Library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) Have the power to accept gifts, grants and donations from whatever source and to expend the same for the specific purpose of the gift, grant, or donation. These gifts, grants and donations shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) Exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

History: En. Sec. 5, Ch. 260, L. 1967.

44-223. Board of trustees—chief librarian—personnel—compensation. The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation and prescribe their duties.

History: En. Sec. 6, Ch. 260, L. 1967.

44-224. Free use of library—exclusions—extending privileges. Every library established under the provisions of this act shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

History: En. Sec. 7, Ch. 260, L. 1967.

44-225. Providing library services—co-operation and merging of boards, institutions and agencies. Library boards of trustees, boards of other

educational institutions, library agencies, and local political subdivisions are hereby empowered to co-operate, merge or combine in providing library service.

History: En. Sec. 8, Ch. 260, L. 1967.

44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes. After the establishment of a county free library as provided in this act, the governing body of any city or town which has an existing tax-supported public library may notify the board of county commissioners that such city or town does not desire to be a part of the county library system. Such notification shall exempt the property in such city or town from liability for taxes for county library purposes.

History: En. Sec. 9, Ch. 260, L. 1967.

44-227. "City" defined. Wherever the word "city" is used in this act it means city or town.

History: En. Sec. 11, Ch. 260, L. 1967.

44-228. Continued existence of all public libraries. All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

History: En. Sec. 12, Ch. 260, L. 1967.

CHAPTER 3—CITY FREE PUBLIC LIBRARIES

(Repealed—Section 12, Chapter 260, Laws of 1967)

44-301 to 44-303. (5049 to 5051) Repealed.

Repeal

These sections (Sec. 1, p. 110, L. 1883; Secs. 5039 to 5041, Pol. C. 1895; Sec. 1, p. 229, L. 1897; Sec. 1, Ch. 32, L. 1931;

Sec. 1, Ch. 61, L. 1947), relating to the establishment of free public libraries, were repealed by Sec. 12, Ch. 260, Laws of 1967.

CHAPTER 4—STATE LAW LIBRARY

Section 44-403. Powers and duties of board.

44-404. Librarian—term of office.

44-410. Accounts—approval.

44-412. Assistance in preparing index.

44-403. Powers and duties of board. The powers and duties of said board are as follows:

(1) to (5). * * * [Same as parent volume.]

(6) To report as provided in section 2 [82-4002] of this act.

(7). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 153, L. 1949; amd. Sec. 14, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted "as provided in section 2 of this act" for "to the governor, biennially, a statement of all

important transactions of the board, and of the operations of the library, with suggestions and recommendations as to what the board deems necessary for the increased utility and efficiency of the library" in subdivision (6).

44-404. Librarian—term of office. The librarian appointed by the board shall hold office for the term of two (2) years, unless sooner removed by a majority vote of the trustees.

History: En. Sec. 4, Ch. 153, L. 1949; amd. Sec. 21, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a second sentence reading, "The librarian must execute an official bond, in the sum of one

thousand dollars (\$1,000.00), to be approved by the chief justice, and deposited with the secretary of state."

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

44-407. Repealed.

Repeal

This section (Sec. 7, Ch. 153, L. 1949),

relating to the state law library fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

44-410. Accounts—approval. All accounts for the proofing and printing of books, legal periodicals, library collections, furniture, fixtures and supplies must be prepared by the librarian, submitted to and approved by at least one (1) member of the board of trustees.

History: En. Sec. 10, Ch. 153, L. 1949; amd. Sec. 13, Ch. 97, L. 1961; amd. Sec. 85, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "and thereafter paid out of the state treasury from the library fund" at the end of the section.

44-412. Assistance in preparing index. The law librarian is authorized and empowered to engage and employ stenographic assistance in the preparation of such indexes.

History: En. Sec. 12, Ch. 153, L. 1949; amd. Sec. 86, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "and said assistant shall be paid out of the library fund" at the end of the section.

CHAPTER 5—HISTORICAL SOCIETY—LIBRARY AND MUSEUM

- Section 44-516. Historical society continued and perpetuated—purposes.
 44-517. Definition of terms.
 44-518. Library and museum independent of other state institutions.
 44-519. Board of trustees—appointment and terms of members.
 44-520. Qualifications of trustees.
 44-521. Executive committee of trustees.
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 44-523. Powers and duties of trustees.
 44-524. Director's responsibility—assistants and employees.
 44-525. Official seal of society.
 44-526. Furnishings and fittings in veterans' and pioneers' building.
 44-527. Fund raising drives—revenues and receipts.
 44-528. Fine arts' commission abolished.
 44-529. Admission fees for antique automobile collection—disposition of proceeds.

44-501 to 44-515. Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 134, L. 1949; Secs. 14, 19, Ch. 97, L. 1961),

relating to the historical society and the historical library and museum, were repealed by Sec. 14, Ch. 47, Laws 1963.

Sections 46 to 48, Ch. 147, Laws 1963, under the rule of section 43-515, such purported to amend sections 44-509, 44-510, and 44-514, respectively; however, amendments were void and did not revive the amended sections.

44-516. Historical society continued and perpetuated—purposes. The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana, entitled “an act to incorporate the historical society of Montana,” approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled “an act concerning the historical society for the state of Montana and making an appropriation therefor,” and by “an act to perpetuate the historical society of the state of Montana,” approved March 1, 1949, is hereby continued and perpetuated as the “Montana Historical Society” and as such constitutes an agency of state government for the use, learning, culture and enjoyment of the citizens of the state and for the acquisition, preservation and protection of historical records, art archival and museum objects, historical places, sites and monuments and the custody, maintenance and operation of the historical library, museums, art galleries, and historical places, sites and monuments.

History: En. Sec. 1, Ch. 47, L. 1963.

Title of Act

An act continuing and perpetuating the Montana historical society and prescribing the powers and duties of the board of trustees of the society; abolishing the Montana fine arts' commission; and repealing

sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947.

Cross-References

Society transferred to department of education, sec. 82A-503.

44-517. Definition of terms. As used in this act, (1) “Society” means the Montana historical society and includes

- (a) The historical and miscellaneous libraries and their contents;
- (b) Any museums and art galleries, and their contents, acquired by the trustees;
- (c) Any historical places, sites or monuments acquired or developed by the society;
- (d) Any divisions, departments and activities operated in conjunction with the historical library as are established by the trustees; and
- (e) Any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture or fixtures acquired by the trustees.

(2) “Trustees” means the board of trustees of the Montana historical society.

(3) “Committee” means the executive committee of the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 47, L. 1963.

44-518. Library and museum independent of other state institutions. Any historical library or museum administered by the society in accord-

ance with the provisions of this act shall be independent of any other library, museum, or gallery owned, maintained or operated by the state of Montana.

History: En. Sec. 3, Ch. 47, L. 1963.

44-519. Board of trustees—appointment and terms of members. The government and administration of the society is vested in a board of fifteen (15) trustees, appointed by the governor, by and with the consent of the senate. Three (3) each of the original members of the board shall be appointed for one (1), two (2), three (3), four (4) and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

History: En. Sec. 4, Ch. 47, L. 1963.

Cross-References

Appointment and terms of members of board after reorganization, sec. 82A-507 (2).

Removal of Director of State Historical Society

Under this section and sections 44-523

and 59-405 the power to remove the director of the state historical society lies in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. State ex rel. MacGilvra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

44-520. Qualifications of trustees. Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest and to serve without compensation. The governor shall in so far as possible, appoint trustees from the various geographical areas of the state.

History: En. Sec. 5, Ch. 47, L. 1963.

44-521. Executive committee of trustees. The trustees may select an executive committee of five (5) trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

History: En. Sec. 6, Ch. 47, L. 1963.

44-522. Reimbursement of trustees. The trustees shall serve without compensation, but may be reimbursed for mileage.

History: En. Sec. 7, Ch. 47, L. 1963.

Cross-References

Compensation and reimbursement of trustees, secs. 82A-110(5), 82A-507(2).

44-523. Powers and duties of trustees. The powers and duties of the trustees are as follows:

(1) To elect annually from among their number a president, a vice-president, and a secretary.

(2) To adopt bylaws for their own government, and to make rules and regulations, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people.

(3) To appoint a director, fix his salary, and prescribe his duties and responsibilities.

(4) To create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships.

(5) To sell or exchange publications and surplus copies of books or other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art.

(6) To see that the collections and properties of the society are maintained in good order and repair.

(7) To report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(8) To accept, receive and administer in the name of the society, any gifts, donations, properties, securities, bequests and legacies that may be made to the society. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(9) To collect, assemble, preserve and display where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular, and generally of the Pacific Northwest, Northern Rocky Mountain and Northern Great Plains regions, and of the United States of America when pertinent; to procure from pioneers, early settlers and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west and all other related documents of Montana's history, development and society; to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military and pioneer artifacts and implements; to collect and preserve such natural history objects as fossils, plants, minerals and animals; to collect and preserve books, maps, manuscripts and other materials as will tend to facilitate historical, scientific, and antiquarian research; to promote the study of Montana history by lectures and publications; to generally foster and encourage the fine arts and cultural activities in Montana; to receive for and on behalf of the state by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere; and to microfilm papers or documents in danger of disappearance or injury.

History: En. Sec. 8, Ch. 47, L. 1963.

Cross-References

Board to act in advisory capacity, sec. 82A-507(3).

Director's position and functions continued, sec. 82A-504.

Trustees' functions transferred to director, sec. 82A-505.

Removal of Director of State Historical Society

Under this section and sections 44-519 and 59-405 the power to remove the director of the state historical society lies in the board of trustees of the state his-

torical society and it may do so without notice or opportunity to be heard. State ex rel. MacGilyra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

44-524. Director's responsibility—assistants and employees. The director is fully responsible for the immediate direction, management and control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

History: En. Sec. 9, Ch. 47, L. 1963.

References

State ex rel. MacGilyra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

44-525. Official seal of society. The design of the official seal of the society shall be substantially as follows: A central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background and directly beneath it the figures "1865." The seal shall be two inches in diameter and surrounded by the words, "Montana Historical Society Seal."

History: En. Sec. 10, Ch. 47, L. 1963.

44-526. Furnishings and fittings in veterans' and pioneers' building. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

History: En. Sec. 11, Ch. 47, L. 1963.

44-527. Fund raising drives—revenues and receipts. The society may engage in such fund raising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions and royalties on the display and sale of arts and crafts. All profits, revenues, royalties or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development and operation of the society.

History: En. Sec. 12, Ch. 47, L. 1963.

44-528. Fine arts' commission abolished. The Montana fine arts' commission is abolished. All records, property and moneys of the Montana fine arts' commission are transferred to the society.

History: En. Sec. 13, Ch. 47, L. 1963.

Repealing Clause

Section 14 of Ch. 47, Laws 1963 read
"Sections 44-501, 44-502, 44-503, 44-504,

44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947, are repealed."

44-529. Admission fees for antique automobile collection—disposition of proceeds. An admission fee shall be set by the board of trustees of the Montana historical society and paid by patrons of the antique Ford automobile collection. Admission fee proceeds up to the amount of twelve thousand five hundred dollars (\$12,500) per fiscal year shall be deposited in the general fund. Proceeds over such amount each fiscal year shall be deposited in the Montana historical society account in the earmarked revenue fund.

History: En. Sec. 2, Ch. 324, L. 1967.

Title of Act

An act to appropriate money from the general fund to the Montana historical society to lease, operate and maintain a building to house the antique Ford auto-

mobile collection for the biennium ending June 30, 1969.

Appropriation

Section 1 of Chapter 324, Laws 1967, appropriated funds for housing the antique automobile collection during the biennium ending June 30, 1969.

CHAPTER 6—INTERSTATE LIBRARY COMPACT

Section 44-601. Text of library compact.

44-602. Executive officer of state library commission as administrator.

44-601. Text of library compact. The Interstate Library Compact is hereby approved, enacted into law, and entered into by the state of Montana, which compact is in full as follows:

INTERSTATE LIBRARY COMPACT

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the state's party to this compact to co-operate and share their responsibilities; to authorize co-operation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a co-operative basis; and to authorize co-operation and sharing among localities, states and others in providing joint or co-operative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

(a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or co-operative furnishing of library services.

Article III. Interstate Library Districts

(a) Any one or more public library agencies in a party state in co-operation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may co-operate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or co-operative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.
5. Sue and be sued in any court of competent jurisdiction.
6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.
7. Construct, maintain and operate a library, including any appropriate branches thereof.
8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Co-operation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or co-operative library programs, render joint or co-operative library services, and enter into and perform arrangements for the co-operative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a co-operative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreements

(a) In order to provide for any joint or co-operative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.

2. Provide for the allocation of costs and other financial responsibilities.

3. Specify the respective rights, duties, obligations and liabilities of the parties.

4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on

any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and co-operate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry into Force and Withdrawal

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this com-

pact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 119, L. 1967.

Title of Act

An act approving and enacting into

law the Interstate Library Compact and designating the executive officer of the state library commission as compact administrator for said compact.

44-602. Executive officer of state library commission as administrator.
The executive officer of the state library commission shall be the compact administrator of the Interstate Library Compact.

History: En. Sec. 2, Ch. 119, L. 1967.

TITLE 45—LIENS

- Chapter 1. Liens in general, definitions, creation and effect, 45-109, 45-112, 45-116
3. Redemption from liens—extinction, 45-301, 45-308.
4. Loggers' liens, 45-401.
5. Mechanics' liens, 45-501 to 45-502.1, 45-513 to 45-515.
7. Crop liens for seed, grain and hail insurance, 45-704, 45-707.
8. Threshermen's liens, 45-809.
9. Farm laborers' liens, 45-911.
10. Laborers' and materialmen's liens on oil and gas wells and pipelines, 45-1003.
11. Miscellaneous liens, 45-1106, 45-1107.
13. Stoppage in transit, Repealed—Section 10-102, Chapter 264, Laws of 1963.
14. Crop or grain lien for dusting or spraying, 45-1410.
15. Federal tax lien, 45-1501 to 45-1507.

CHAPTER 1—LIENS IN GENERAL, DEFINITIONS, CREATION AND EFFECT

- Section 45-109. Lien on future interest.
45-112. Certain contracts void.
45-116. Holder of lien not entitled to compensation.

45-106. (8224) Repealed.

Repeal

This section (Sec. 3735, Civ. C. 1895), relating to mortgages and pledges, was

repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-109. (8227) **Lien on future interest.** An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest. [Effective January 1, 1965.]

History: En. Sec. 3742, Civ. C. 1895;

re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R. C. M. 1921; amd. Sec. 11-118, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2883. Field Civ. C. Sec. 1589.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the second sentence.

45-112. (8230) **Certain contracts void.** Except as otherwise provided by the Uniform Commercial Code: all contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void. [Effective January 1, 1965.]

History: En. Sec. 3751, Civ. C. 1895;

re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R. C. M. 1921; amd. Sec. 11-119, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2889. Based on Field Civ. C. Sec. 1592.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-116. (8234) **Holder of lien not entitled to compensation.** Except as otherwise provided by the Uniform Commercial Code: One who holds

property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 47-109 and 47-110. [Effective January 1, 1965.]

History: En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R. C. M. 1921; amd. Sec. 11-120, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2892. Field Civ. C. Sec. 1596.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 3—REDEMPTION FROM LIENS—EXTINCTION

Section 45-301. Right to redeem.

45-308. When restoration extinguishes lien.

45-301. (8238) **Right to redeem.** Except as otherwise provided by the Uniform Commercial Code, every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed. [Effective January 1, 1965.]

History: En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R. C. M. 1921; amd. Sec. 11-121, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2903.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-308. (8245) **When restoration extinguishes lien.** Except as otherwise provided by the Uniform Commercial Code: the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration. [Effective January 1, 1965.]

History: En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R. C. M. 1921; amd. Sec. 11-122, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2913. Based on Field Civ. C. Sec. 1607.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 4—LOGGERS' LIENS

Section 45-401. Who entitled to lien.

45-401. **Who entitled to lien.** Every person, general partnership, limited partnership, corporation or association performing labor upon, or who shall assist in obtaining or securing sawlogs, piling, railroad ties, cordwood, or other timber, has a lien upon the same and upon all other sawlogs, piling, railroad ties, cordwood, or other timber which, at the time of the filing of the claim or lien hereinafter provided, belonged to the person or corporation for whom the labor was performed, for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber in said claim or

lien described, whether such work or labor was done at the instance of the owner of the same or his agent, or a contractor or subcontractor, or any person in behalf of such owner or his agent, or a contractor or subcontractor. The cook in a logging-camp shall be regarded as a person who assists in obtaining or securing any of the timber herein mentioned.

History: En. Sec. 1, p. 126, L. 1899; re-en. Sec. 5819, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1909; re-en. Sec. 8318, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1967. Cal. Civ. C. Sec. 3065.

Amendments

The 1967 amendment inserted "general partnership, limited partnership, corporation or association" after "Every person" at the beginning of the section.

Persons Entitled to Lien

A logging corporation acting in the capacity of an independent contractor was not a "person" as set forth in this chapter and was not entitled to a lien thereunder. *Jack Long Logging Co. v. Pyramid Mountain Lumber, Inc.*, 143 M 87, 387 P 2d 712.

CHAPTER 5—MECHANICS' LIENS

- Section 45-501. Who entitled to lien.
 45-502. How lien perfected.
 45-502.1. Notice of completion.
 45-513. Substitution of bond allowed—filing—amount—condition.
 45-514. Lien discharged upon filing of bond.
 45-515. Action upon bond—period of limitation same.

45-501. (8339) Who entitled to lien. Every mechanic, miner, machinist, architect, foreman, engineer, builder, lumberman, artisan, workman, laborer, and any other person, performing any work and labor upon, or furnishing any material, machinery, or fixture for, any building, structure, bridge, flume, canal, ditch, aqueduct, mining claim, coal mine, quartz lode, tunnel, city or town lot, farm, ranch, fence, railroad, telegraph, telephone, electric light, gas, or waterworks or plant, or any improvements, upon complying with the provisions of this chapter, for his work or labor done, or material, machinery or fixtures furnished, has a lien upon the property upon which the work or labor is done or material is furnished.

History: En. Sec. 1, p. 332, Bannack Stat.; amd. Sec. 1, p. 509, Cod. Stat. 1871; re-en. Sec. 820, 5th Div. Rev. Stat. 1879; amd. Sec. 1370, 5th Div. Comp. Stat. 1887; amd. Sec. 2130, C. Civ. Proc. 1895; re-en. Sec. 7290, Rev. C. 1907; re-en. Sec. 8339, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1925; amd. Sec. 1, Ch. 408, L. 1971. Cal. C. Civ. Proc. Sec. 1183.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Amendments

The 1971 amendment inserted a comma after "machinery" the first place that word appears.

Abandoned Improvements—Delay in Completion

Where contract specifically said that contractor's ability to continue work would be dependent upon prompt payment by owner as agreed and owner did not pay as agreed, contractor was allowed foreclosure of lien even though he was unable to complete the work. *Gramm v. Insurance Unlimited*, 141 M 456, 378 P 2d 662.

Claim Arising upon Contract

A mechanic's lien under this section and sections 45-502 to 45-512 is not a claim arising upon a contract under section 91-2704 and the lien is not lost because creditor's claim is not filed. *Hammer v. Chapin*, 256 F Supp 818, 820.

Materialmen

There could be no valid materialman's

lien against owner where general contractor, subcontractor and materialman told owner that he was not dealing with materialman and that materialman was wholesaler and dealt only with contractors. *Glacier State Electric Supply Co. v. Hoyt*, 152 M 415, 451 P 2d 90.

Property Covered by Lien

Where defendant owned seven unpatented mining claims and leased such claims under agreement requiring lessee to do shaft and engineering work, and

such work was subsequently done by plaintiff with knowledge of lessor, mechanic's lien held by plaintiff attached to all mining claims held by defendant, notwithstanding that plaintiff performed work on only one such claim in group of seven claims. *Fausett v. Blanchard*, 154 M 301, 463 P 2d 319.

References

Frank J. Trunk & Son v. DeHaan, 143 M 442, 391 P 2d 353 (concurring opinion).

45-502. (8340) How lien perfected. (1) Every person wishing to avail himself of the benefits of this chapter must file with the county clerk of the county in which the property or premises mentioned in the preceding section is situated, and within ninety days after the material or machinery aforesaid has been furnished, or the work or labor performed, a just and true account of the amount due him, after allowing all credits, and containing a correct description of the property to be charged with such lien, verified by affidavit, but any error or mistake in the account or description does not affect the validity of the lien, if the property can be identified by the description; which paper containing the account, description, and affidavit is deemed the lien, and when there is an open account between the parties for labor, material, or machinery, such lien may be filed within ninety days after the date of the last item in such account, and include all items and charges contained therein, for material or machinery furnished for, or work performed on, the property on which the lien is claimed.

(2) The time within which to perfect the lien by filing of the notice of lien is shortened if the provisions of section 3 [45-502.1] of this act are complied with and a notice of completion is timely filed, in which event such notice of lien must be filed within sixty (60) days immediately following the first publication of the notice of completion.

(3) The following acts of events constitute "completion of any work or improvement" for the purpose of filing a notice of completion:

(a) The written acceptance by the owner, his agent or his representative of the building, improvement or structure. The filing of a notice of completion shall not be considered as an acceptance of the building, improvement, or other structure.

(b) The cessation from labor for thirty (30) days upon any building, improvement or structure, or the alteration, addition to or repair thereof.

History: Ap. p. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; en. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R. C. M. 1921; amd. Sec. 2, Ch. 408, L. 1971. Cal. C. Civ. Proc. Sec. 1187.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Amendments

The 1971 amendment designated the former section as subsection (1); and added subsections (2) and (3).

Effect of Failure to File Lien within Ninety Days after Material Is Furnished—Subsequent Contract

Where no privity of contract existed between subcontractor and the owners of the improved building and subcontractor did not comply with the ninety-day limitation for filing lien, such subcontractor lost all right to sue owner who had paid prime contractor for work done, and subcontractor was also barred from adding on time period of a subsequent contract with owners for purposes of filing its mechanic's lien. *Frank J. Trunk & Son v. DeHaan*, 143 M 442, 391 P 2d 353.

Effect of Overstatement of Amount

Where there were indications that contractor had "padded the bill" for nearly \$4000 but no proof that he had done so with intent to defraud, he did not lose his right to a mechanic's lien but the trial court should require an accounting. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

Last Item in Open Account

Entries made in open account crediting owner for materials returned did not operate to keep ninety-day period allowed under this section for filing mechanic's lien from lapsing, since entry of credit for payment or for goods returned does not fall within ambit of "last item in such account"; legislature by that language meant last item furnished, not last entry in open account. *American Homes, Inc. v. Broadmoor Corp.*, 153 M 184, 455 P 2d 334.

Question of Continuous Open Account One of Fact

The question of whether a continuous open account existed some fifteen months after completion of the contracted construction work was one of fact and the finding by the trial court would not be disturbed on appeal when supported by evidence. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

45-502.1. Notice of completion. (1) The owner may file a notice of completion at any time after the completion of any work or improvement.

(2) The notice of completion together with an affidavit of publication as hereinafter required shall be filed in the office of the county recorder of the county where the property is situated and the notice shall set forth:

(a) The date when the work or improvement was completed, or the date on which cessation from labor occurred first and the period of its duration.

(b) The owner's name or owners' names, as the case may be, the address of the owner or addresses of the owners, as the case may be, and the nature of the title, if any, of the person signing the notice.

(c) A description of the property sufficient for identification.

(d) The name of the contractor, if any.

(3) The notice shall be verified by the owner or his agent.

(4) A copy of the notice of completion shall be published once each week for three successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

History: En. Sec. 3, Ch. 408, L. 1971.

Title of Act

An act to shorten the period for filing

mechanics' liens by providing for filing of a notice of completion and amending sections 45-501 and 45-502, R. C. M., 1947.

45-504. (8342) What property affected.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Mining Claims

Limit of one acre to mechanic's lien, as set forth in this section, does not apply to mining claim. *Fausett v. Blanchard*, 154 M 301, 463 P 2d 319.

45-505. (8343) Leasehold interest—how affected.**Compiler's Note**

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*,

111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

45-506. (8344) Priority of lien over mortgage or other liens.**Lien Preferred to Subsequent Mortgage**

A mechanic's lien for performed work and furnished material for building, erected on land of decedent prior to his death, which was perfected August 23, 1963 after decedent's death, had priority over a mortgage executed by the suc-

cessor to the estate of the deceased on January 21, 1965 to the small business administration, an agency of the United States, which failed to protect itself by withholding a sufficient amount of the loan proceeds to retire the lien. *Hammer v. Chapin*, 256 F Supp 818, 820.

45-513. Substitution of bond allowed — filing — amount — condition.

Whenever a mechanics' lien has been filed upon real property or any improvements thereon, as enumerated in section 45-501, R. C. M. 1947, the owner of any interest in such property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose such lien, file a bond with the clerk of the district court in the county in which such property is situated, or, if such property is situated in more than one county, with the clerk of the district court of any county in which a part of such property is situated. Such bond shall be in an amount one and one-half ($1\frac{1}{2}$) times the amount of the said lien, and shall be either in cash or written by a corporate surety company. If written by a corporate surety, such bond shall be approved by a judge of the district court with which such bond is filed. The bond shall be conditioned that if the lien claimant shall be finally adjudged to be entitled to recover upon the claim upon which his lien is based, the principal or his sureties shall pay to such claimant the amount of his judgment, together with any interest, costs, attorney fees, and other sums which such claimant would be entitled to recover upon the foreclosure of a lien against the principal.

History: En. Sec. 1, Ch. 338, L. 1971.

Title of Act

An act providing that the owner of real property against which a mechanics' lien has been filed may substitute a bond for the security of the lien and that said real property shall then be released from the

effect of such lien, together with any improvements thereon, and providing, in such instance, that the lien claimant shall have an action upon the bond rather than an action to foreclose a lien, and providing that the statute of limitations for foreclosure of a mechanics' lien shall apply to an action upon such bond.

45-514. Lien discharged upon filing of bond. Upon the filing of a bond as provided in section 1 [45-513] of this act, the lien against the said real property shall forthwith be discharged and released in full and the said bond shall be substituted for such lien.

History: En. Sec. 2, Ch. 338, L. 1971.

45-515. Action upon bond—period of limitation same. When a bond is filed as provided in section 1 [45-513] of this act, the person filing such lien may bring an action upon the said bond. Such action shall be commenced within the time allowed for the commencement of an action upon

foreclosure of a lien, and the statute of limitations applicable to a lien foreclosure shall apply to an action upon such bond as it would had no bond been filed.

History: En. Sec. 3, Ch. 338, L. 1971.

CHAPTER 7—CROP LIENS FOR SEED, GRAIN AND HAIL INSURANCE

Section 45-704. Acknowledgment of satisfaction of lien.

45-707. Satisfaction of lien.

45-704. (8362) Acknowledgment of satisfaction of lien. Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action. [Effective January 1, 1965.]

History: En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R. C. M. 1921; amd. Sec. 11-123, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "ac-

knowledge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

45-707. (8365) Satisfaction of lien. Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the then current year, it is the duty of the lienor to acknowledge satisfaction thereof within twenty days after receiving payment, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before the first day of March of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R. C. M. 1921; amd. Sec. 11-124, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first part of the first sentence.

CHAPTER 8—THRESHERMEN'S LIENS

Section 45-809. Acknowledgment of satisfaction of lien—penalty.

45-809. (8374) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge sat-

isfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R. C. M. 1921; amd. Sec. 11-125, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowl-

edge, satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

CHAPTER 9—FARM LABORERS' LIENS

Section 45-911. Acknowledgment of satisfaction of lien—penalty.

45-911. (8374.11) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action. [Effective January 1, 1965.]

History: En. Sec. 11, Ch. 196, L. 1935; amd. Sec. 11-126, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first

part of the section; inserted "within thirty (30) days after being requested to do so by a person having a property interest in such crops" in the latter part of the section; and made a minor change in punctuation.

CHAPTER 10—LABORERS' AND MATERIALMEN'S LIENS ON OIL AND GAS WELLS AND PIPELINES

Section 45-1003. Manner of enforcing liens—duty of county clerks.

45-1003. (8377) Manner of enforcing liens—duty of county clerks. The liens herein created shall arise, be perfected, have the same priority and be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens, with the following exceptions:

(1) The statement of lien shall be filed with the county clerk of the county in which any part of such land, leasehold, or pipeline is situated.

(2) Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under the contract.

History: En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R. C. M. 1921; amd. Sec. 2, Ch. 152, L. 1923; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963.

Amendment
The 1963 amendment inserted the words "arise, be perfected, have the same priority and" near the beginning of the section;

and added, at the end of the section, the words "with the following exceptions" and the numbered paragraphs.

Repealing Clause

Section 2 of Ch. 193, Laws 1963 read "Sections 45-1004, 45-1005 and 45-1006, R. C. M. 1947, are hereby repealed."

45-1004 to 45-1006. Repealed.

Repeal

These sections (Secs. 4 to 6, Ch. 143, L. 1957), relating to the perfection and pri-

ority of oil and gas well and pipeline liens, were repealed by Sec. 2, Ch. 193, Laws 1963.

CHAPTER 11—MISCELLANEOUS LIENS

Section 45-1106. Agisters' liens and liens for service—priority.

45-1107. Secured party may take possession of property.

45-1104. (8381) Repealed.

Repeal

This section (Sec. 3933, Civ. C. 1895), relating to liens of sellers of personal

property, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-1106. (8383) Agisters' liens and liens for service—priority. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safe-keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith. A ranchman, farmer, agister, herder, hotel-keeper, livery, boarding, or feed stable-keeper, to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing, or ranching, has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the same, and is authorized to retain possession thereof until the sum due is paid. The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions, or other recorded liens on the property involved, unless within ten days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lien holder, stating his intention to assert a lien on said property, under the terms of this act, and stating the nature and approximate amount of the work, or feed, performed or furnished or intended to be performed or furnished therefor.

Such service may be made either by personal service or by mailing by registered mail a copy of said notice to the secured party or other lien holder at his last known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office. [Effective January 1, 1965.]

History: Similar early acts were Sec. 1, p. 331, Bannack Stat.; re-en. Sec. 29, p. 514, Cod. Stat. 1871; re-en. Sec. 848, 5th Div. Rev. Stat. 1879; re-en. Sec. 1394, 5th Div. Comp. Stat. 1887; amd. Sec. 3935, Civ. C. 1895.

En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R. C. M. 1921; amd. Sec. 11-127, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3051. First paragraph based on Field Civ. C. Sec. 1696.

Amendment

The 1963 amendment substituted "perfected security interests under the Uniform Commercial Code — Secured Transactions" in the first part of the third sentence in the first paragraph for "the lien of prior chattel mortgages"; and substituted "secured party" for "mortgagee"

in the third sentence in the first paragraph and in the first sentence in the second paragraph.

Other Recorded Liens

The term "other recorded liens" includes conditional sales contracts. *Williamson v. Skerritt*, 141 M 422, 378 P 2d 215.

45-1107. (8384) Secured party may take possession of property. Within ten days after the date of such mailing, or five days after such personal service, the secured party or other lien holder, or his representative, shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or other lien holder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this act. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R. C. M. 1921; amd. Sec. 11-128, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3052.

cured party" for "mortgagee" in two places; substituted "security interest" for "chattel mortgage" in the second sentence; and added "over the lien created by this act" at the end of the section.

Amendment

The 1963 amendment substituted "se-

CHAPTER 13—STOPPAGE IN TRANSIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

45-1301 to 45-1305. (8396 to 8400) Repealed.

Repeal

These sections (Secs. 3970 to 3974, Civ. C. 1895; Secs. 5837 to 5841, Rev. C. 1907; Secs. 8396 to 8400, R. C. M. 1921), relating

to stoppage in transit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 14—CROP OR GRAIN LIEN FOR DUSTING OR SPRAYING

Section 45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure.

45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure. Whenever the indebtedness which is a lien upon any such grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 10, Ch. 205, L. 1953; amd. Sec. 11-129, Ch. 264, L. 1963.

satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops" in the latter part of the section.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowledge

CHAPTER 15—FEDERAL TAX LIEN

- Section 45-1501. Federal tax lien—place of filing.
 45-1502. Execution of notices and certificates.
 45-1503. Duties of filing officer.
 45-1504. Fees.
 45-1505. Uniformity of interpretation.
 45-1506. Short title.
 45-1507. Tax liens and notices filed before effective date of this act.

45-1501. Federal tax lien—place of filing. (a) Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to a federal tax lien is situated.

(b) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) in all other cases in the office of the clerk and recorder of the county where the taxpayer resides at the time of filing of the notice of lien.

History: En. Sec. 1, Ch. 228, L. 1967.

NOTE.—The following states have enacted the Uniform Federal Tax Lien Registration Act: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South

Carolina, South Dakota, Tennessee, Utah, Virginia, Wisconsin and Wyoming.

Title of Act

An act to revise the Uniform Federal Tax Lien Registration Act, authorizing the filing of notices of liens for taxes payable to the United States of America and of certificates discharging such liens, and to make uniform the law with reference thereto; repealing sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906, 84-3907, R. C. M. 1947.

45-1502. Execution of notices and certificates. Certification by the secretary of the treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

History: En. Sec. 2, Ch. 228, L. 1967.

45-1503. Duties of filing officer. (a) If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any certificate described in subsection (b) is presented to the filing officer, and

(1) he is the secretary of state, he shall cause the notice to be marked, held and indexed in accordance with the provisions of subsection (4) of section 87A-9-403, Revised Codes of Montana 1947, as if the notice were a financing statement within the meaning of that code; or

(2) he is any other officer described in section 1 [45-1501] of this act, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director and the total unpaid balance of the assessment appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any tax lien is presented to the secretary of state for filing he shall

(1) cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, except that the notice of lien to which the certificate relates shall not be removed from the files, and

(2) cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal tax lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing with any other filing officer specified in section 1 [45-1501], he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is two dollars (\$2). Upon request the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of one dollar (\$1) per page.

History: En. Sec. 3, Ch. 228, L. 1967.

45-1504. Fees. The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

(1) for a tax lien on real estate, two dollars (\$2).

(2) for a tax lien on tangible and intangible personal property, two dollars (\$2).

(3) for a certificate of discharge or subordination, one dollar (\$1).

(4) for all other notices, including a certificate of release or nonattachment, two dollars (\$2). The officer shall bill the district directors of internal revenue on a monthly basis for fees for documents filed by them.

History: En. Sec. 4, Ch. 228, L. 1967.

45-1505. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 5, Ch. 228, L. 1967.

45-1506. Short title. This act may be cited as the Revised Uniform Federal Tax Lien Registration Act.

History: En. Sec. 6, Ch. 228, L. 1967.

45-1507. Tax liens and notices filed before effective date of this act. Filing officers with whom notices of federal tax liens, certificates and notices affecting such liens have been filed on or before July 1, 1967, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1967," containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1967, any certificate or notice affecting the lien shall be filed in the same office.

History: En. Sec. 9, Ch. 228, L. 1967.

Separability Clause

Section 7 of Ch. 228, Laws 1967 read "Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision

or application and to this end the provisions of the act are severable."

Repealing Clause

Section 8 of Ch. 228, Laws 1967 read "Repeal of prior acts. Sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906 and 84-3907, R. C. M. 1947, and all other acts or parts of acts in conflict herewith are hereby repealed."

TITLE 46—LIVESTOCK

- Chapter 1. Livestock industry—regulation by livestock commission, 46-105.
6. Brands—recording—venting—livestock mortgages, 46-609.
 7. Inspectors and detectives, 46-704, 46-707.
 8. Inspection of livestock before sale or removal from county, 46-801 to 46-804, 46-806, 46-809 to 46-813.
 9. Livestock markets—inspection and quarantine—license and bonding, 46-904, 46-911, 46-918.1.
 10. Estrays—disposal of, 46-1005, 46-1006.
 11. Hides of slaughtered cattle—regulation—hide dealers' licenses, 46-1107.
 14. Legal fences—liability of owners for trespassing stock, 46-1411, 46-1413.
 19. Bounties for killing wild animals—killing dogs injuring livestock, 46-1901, 46-1903, 46-1904, 46-1912, 46-1914, 46-1915.
 21. Sheep—protection from predatory animals—tax, 46-2102, 46-2104.
 23. Grass conservation—grazing districts, 46-2305, 46-2306, 46-2322, 46-2331.
 27. County livestock protective committees, 46-2706.
 28. Cattle protective districts, 46-2801 to 46-2810.
 29. Livestock dealers, 46-2901 to 46-2908.

CHAPTER 1—LIVESTOCK INDUSTRY—REGULATION BY LIVESTOCK COMMISSION

Section 46-105. Audit of bills—payment of expenses.

46-101. (3253) Livestock commission, etc.

Cross-References

Commission renamed and continued as head of department, sec. 82A-1303.

46-102. (3254) Compensation of members.

Cross-References

Compensation and reimbursement of members, secs. 82A-112(1)(e), 82A-1303 (3).

46-104. (3256) Duties and powers of commission.

Livestock Markets

In the regulation of livestock markets under section 46-907 the livestock commission has the power to determine whether or not a showing of convenience

and necessity has been made. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-105. (3257) Audit of bills—payment of expenses. It shall be the duty of the livestock commission to audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the livestock commission moneys in the earmarked revenue fund.

History: En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R. C. M. 1921; amd. Sec. 88, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "which shall be paid out of the livestock commission moneys in the earmarked

revenue fund" at the end of the section for "and when found correct, to certify the same to the state auditor, who shall thereupon draw a warrant upon the state treasurer in favor of the party or parties entitled thereto for the amount so certified, which warrants shall be drawn upon and paid out of the livestock commission fund,

which said fund shall be created by placing to its credit the amounts heretofore directed to be placed to the credit of the sheep inspection and indemnity fund and the stock inspection and detec-

tive fund by section 84-5212, and other funds hereafter appropriated for the support and maintenance of the said commission."

46-106. (3258) Repealed.

Repeal

Section 46-106 (Sec. 6, Ch. 51, L. 1917), relating to the annual report of the com-

mission, was repealed by Sec. 44, Ch. 93 Laws 1969. For present law, see secs. 82-4001 and 82-4002.

CHAPTER 2—LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON—QUARANTINE—INSPECTION AND DESTRUCTION OF DISEASED STOCK—LICENSING DAIRIES, MILK PLANTS AND SLAUGHTERHOUSES

46-201. (3260) Creation of livestock sanitary board.

Cross-References

Board abolished and functions transferred, sec. 82A-1304.

46-241. (3291) Repealed.

Repeal

This section (Sec. 32, Ch. 262, L. 1921), relating to the livestock sanitary board

account, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-242. (3292) Repealed.

Repeal

Section 46-242 (Sec. 33, Ch. 262, L. 1921), relating to the annual report of the

state veterinary surgeon, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

CHAPTER 6—BRANDS—RECORDING—VENTING—LIVESTOCK MORTGAGES

Section 46-609. Fees for recorder of marks and brands.

46-606. (3304) Right of owner of recorded brand.

Ownership of Cattle

Although under this section and section 67-308, prima facie owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome by other evidence under section 93-301-11. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving part-

ners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, overcame the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 491.

46-609. (3307) Fees for recorder of marks and brands. The general recorder of marks and brands shall charge and collect for the recording of each new mark or brand, or for recording each mark or

brand transfer or for re-recording of each mark and brand the sum of ten dollars (\$10), and for a certified copy of any such record and each duplicate certificate one dollar (\$1), and all fees so collected shall be paid into the earmarked revenue fund for the use of the livestock commission; providing, however, that not more than ten per cent (10%) of the net re-recording fees after all expenses of re-recording are paid, shall be expended in any one year except in case of an emergency declared by the governor.

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1929; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959; amd. Sec. 90, Ch. 147, L. 1963; amd. Sec. 1, Ch. 13, L. 1969.

Amendments

The 1963 amendment substituted "the

earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

The 1969 amendment substituted "for the recording of *** sum of ten dollars (\$10)" for "for recording each mark or brand the sum of eight dollars (\$8.00), and for re-recording each mark or brand the sum of four dollars (\$4.00)."

CHAPTER 7—INSPECTORS AND DETECTIVES

Section 46-704. Compensation.

46-707. Compensation for animals killed.

46-702. (3310) Repealed.

Repeal

This section (Sec. 2971, Pol. C. 1895), relating to bonds and oaths of stock inspectors and detectives, was repealed by

Sec. 51, Ch. 177, Laws 1965. For new provisions relating to bonds for state officers and employees, see sec. 6-105 et seq.

46-704. (3312) Compensation. The stock inspectors and detectives are under the exclusive control and direction of the commission, and must be paid for their services such sums as may be agreed upon by the commission, but in no case must they receive any mileage.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R. C. M. 1921; amd. Sec. 91, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "commission" for "board" in two places.

46-707. (3315) Compensation for animals killed. The value of the animal so taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized, and the tender of the valuation so made to the owner shall be full compensation on account of the loss of said animal. All sums of money disbursed as herein provided shall be paid out of the livestock commission moneys in the earmarked revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into said fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R. C. M. 1921; amd. Sec. 92, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "livestock commission moneys in the earmarked revenue fund" in the second sentence for "livestock commission fund."

CHAPTER 8—INSPECTION OF LIVESTOCK BEFORE SALE OR REMOVAL FROM COUNTY

- Section 46-801. Inspection of livestock before change of ownership to feeder purchaser or removal from county.
- 46-802. Duties of state stock inspectors and deputy stock inspectors—Montana livestock commission authorized to make rules and regulations.
- 46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds.
- 46-804. Fees for inspection and livestock transportation permit.
- 46-806. Penalties for violations of act.
- 46-809. Order requiring sheep removal permits—petition by sheep raisers.
- 46-810. Permit required for removal of sheep after order—violation as misdemeanor.
- 46-811. Form and issuance of permits—fee.
- 46-812. Publication of notice of sheep removal permit order.
- 46-813. Removal of permit requirement.

46-801. Inspection of livestock before change of ownership to feeder purchaser or removal from county. (1) Except as in this act otherwise provided, it shall be unlawful to remove or cause to be removed from any county in this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly, by means of any railroad car, motor vehicle, trailer, horse-drawn vehicle, boat or in any manner whatsoever, or to transfer ownership by sale or otherwise to a feeder purchaser, unless such animal shall have been inspected for brands by a state stock inspector or deputy state stock inspector and certificate of such inspection shall have been issued in connection with and for the purpose of such transportation or removal as in this act provided. Such inspection must be made in daylight.

(2) and (3). * * * [Same as parent volume.]

(4) The person in charge of any such cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly being removed from any county in this state, where inspection thereof is required by this act, or where change of ownership to a feeder purchaser has occurred as in this act defined, or when moved under a market consignment permit shall have in his possession the certificate of inspection or market consignment permit issued in connection therewith, and shall exhibit the same to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector or deputy state stock inspector at the request of either of them and the provisions of section 46-803 shall be extended to livestock transported or sold to a feeder purchaser under the above-mentioned permits.

(5). * * * [Same as parent volume.]

(6) (a) to (g). * * * [Same as parent volume.]

(7) Except as provided for in section [subsections] 6 (a) and 6 (b) of this act [section], nothing contained in this chapter shall authorize or permit any person to remove or cause to be removed any animal or animals from any county in this state to a location outside of the state of Montana on the hoof, or by any means or manner whatsoever, unless such animal or animals shall have been inspected for brands by a state stock inspector or deputy state stock inspector and certificate for such

inspection shall have been issued in connection with and for the purpose of such transportation or removal as in this act provided.

(8) It shall be the duty and responsibility of any person in possession of livestock to secure such inspection of livestock as provided in this chapter before any livestock shall leave the state of Montana.

(9) The following words and phrases, as used in this act shall have the following meaning, unless the context otherwise requires:

(a) "Feedlot" means any confined feeding area or enclosure which is not normally used for raising crops within which livestock are fed for marketing purposes.

(b) "Feeder purchaser" means any individual, partnership or corporation which confines or contracts to confine to a feedlot, livestock to be fed for marketing purposes.

History: En. Sec. 1, Ch. 59, L. 1943; amd. Sec. 1, Ch. 176, L. 1945; amd. Sec. 1, Ch. 210, L. 1947; amd. Sec. 1, Ch. 110, L. 1949; amd. Sec. 1, Ch. 184, L. 1953; amd. Sec. 1, Ch. 142, L. 1957; amd. Sec. 1, Ch. 9, L. 1961; amd. Sec. 1, Ch. 54, L. 1969; amd. Sec. 1, Ch. 149, L. 1971.

The 1971 amendment inserted "or to transfer ownership by sale or otherwise to a feeder purchaser" in subsection (1); inserted "or where change of ownership to a feeder purchaser has occurred as in this act defined" and "or sold to a feeder purchaser" in subsection (4); and added subsection (9).

Amendments

The 1969 amendment added subsections (7) and (8).

46-802. Duties of state stock inspectors and deputy stock inspectors—Montana livestock commission authorized to make rules and regulations. It shall be the duty of state stock inspectors and deputy state stock inspectors, upon the application of the owner of any such animal referred to in section 46-801, or the duly authorized agent of such owner, to inspect all such animals intended for sale to a feeder purchaser removal or shipment as in this act provided, and to issue his certificate of inspection therefor, if it shall appear with reasonable certainty that the applicant is the owner of such animal or has the lawful right to the possession thereof.

The inspection herein provided for shall include such examination of the animal and all marks and brands thereon as to identify the same. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or of the applicant for inspection, and the purchaser or transferee, if applicable, the class of the animal as specified in section 46-801, the marks and brands, if any, upon the animal, and such other information and upon such form of certificate as the livestock commission may from time to time require. One (1) copy of the certificate shall be retained by the inspector, one (1) copy thereof shall be furnished by the inspector to the owner or shipper of the animal, and one (1) shall be filed by the inspector with the secretary of the livestock commission at Helena, Montana, within five (5) days.

If it shall appear with reasonable certainty that the applicant is the owner of such animals or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff

or deputy sheriff, upon application of an owner or his agent of any such animal or animals to be consigned and delivered directly to a licensed livestock market located in another county of the state, or delivered directly to a shipping point duly approved by the Montana livestock commission where a livestock inspector is available for inspection, in an adjoining county, shall issue to such person a separate market consignment permit or transportation permit for each owner when the owner, or owners, or their duly authorized agents sign such permit certifying the brands, description and destination of such animals. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or animals and the name and address of the person actually transporting the animal or animals if different than the owner, the kind of animal or animals, the marks and brands, if any, upon the animal or animals, a description of the vehicle or vehicles to be used to transport such animal or animals to include the license number of such vehicle or vehicles and such other information and upon such form of permit as the livestock commission may from time to time require. Any such permit so issued shall be good for shipment within thirty-six (36) hours from date and time of issue; provided, however, that permits not used within this time limitation must be returned to the issuing officer to be canceled and to release permittee from performance. One copy of such permit shall be retained by the inspector or sheriff's office, one copy shall be filed by the inspector or sheriff's office with the secretary of the livestock commission at Helena, Montana within five (5) days of the date of issue, and one copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the animal or animals which such copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the animal or animals are delivered.

The Montana livestock commission is hereby authorized to make such rules and regulations as shall be deemed necessary to carry out the provisions of this act.

History: En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957; amd. Sec. 1, Ch. 35, L. 1969; amd. Sec. 2, Ch. 149, L. 1971.

Amendments

The 1969 amendment inserted "duly approved * * * available for inspection" after

"shipping point" in the third paragraph and added the last paragraph.

The 1971 amendment inserted "sale to a feeder purchaser" in the first paragraph; and inserted "and the purchaser or transferee, if applicable" in the second sentence of the second paragraph.

46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds. All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state, or upon a change of ownership, to a feeder purchaser shall, in addition to the powers granted them by law, possess the further authority to inspect and seize either at the point of sale, shipment or destination or en route any livestock, or proceeds thereof, which said inspector may have good

reason to believe is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection issued before shipment or removal of such livestock.

Upon taking possession of any such livestock in the exercise of the authority granted by this act, the state stock inspector may retain same in his possession for not to exceed fifteen (15) days for the purpose of making further investigation relative to its ownership, or may either at once or at any time within said period of fifteen (15) days sell said livestock at any licensed livestock market, or in the open market, for the best available price and remit the proceeds, less the cost of keeping and sale, to the livestock commission together with a full description of the animal sold, giving marks and brand, if any, and a statement of the reason for the seizure and sale thereof. Said proceeds shall be deposited by the livestock commission with the state treasurer and credited to the agency fund, where it shall be subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock.

History: En. Sec. 3, Ch. 59, L. 1943; amd. Sec. 108, Ch. 147, L. 1963; amd. Sec. 3, Ch. 149, L. 1971.

Amendment

The 1963 amendment substituted "agency fund" for "stock estray fund" in the last sentence of the second paragraph;

and substituted "for moneys arising from the sale of stray stock" for "against said fund" at the end of the section.

The 1971 amendment inserted "or upon a change of ownership, to a feeder purchaser" in the first paragraph; and inserted "sale" before "shipment or destination" in the first paragraph.

46-804. Fees for inspection and livestock transportation permit. (a) For the service of inspection herein provided for before removal from county, or before change of ownership to a feeder purchaser, the inspector making such inspections shall receive twenty-five cents (25¢) per head for twelve (12) head or less, or three dollars (\$3.00) for from twelve (12) head to thirty (30) head and shall receive ten cents (10¢) per head for each animal over thirty (30) head; for the issuance of a market consignment permit or transportation permit herein provided for before removal from county, the inspector, sheriff or deputy sheriff issuing such permits shall receive twenty-five cents (25¢) for each permit issued for twelve (12) head or less; fifty cents (50¢) for each permit for twelve (12) to thirty (30) head and one dollar (\$1.00) for each permit issued for over thirty (30) head and shall receive in addition thereto his necessary actual expenses, to be paid by the owner thereof or the person for whom the inspection is made or permit issued. All such inspection and permit fees and expenses shall be collected by the inspector, sheriff or deputy sheriff making the same at the time of inspection or issuance of permit and all such fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(b) For the service of inspection herein provided for before any such animal is sold or offered for sale at any licensed public market, the state stock inspector making such inspection shall receive (1) twenty cents (20¢) per head for any such animal originating within the county in the state in which such market is maintained, or transported under a market consignment permit, and (2) ten cents (10¢) per head for any such animal previously inspected before removal from county as herein provided. All such fees to be paid by the owner thereof or by the person for whom the inspection is made. For inspecting any such animal before same is removed from the premises of such licensed public market the state stock inspector making such inspection shall receive ten cents (10¢) per head from the owner thereof or the person for whom the inspection is made. All such fees for inspection at such market shall be collected by the state stock inspector making the inspection at the time such inspection is made and shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(c) A question or doubt having arisen as to the intention of the legislature and policy of the state concerning the disposition of inspection fees and expenses collected by the state stock inspectors of the state of Montana for the inspection of livestock, it is hereby declared to be the policy of this state and the intent of the said twenty-eighth legislative assembly of the state of Montana that all such inspection fees and expenses be paid to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission, and that said state stock inspectors shall be paid for their services and receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957; amd. Sec. 93, Ch. 147, L. 1963; amd. Sec. 4, Ch. 149, L. 1971.

Amendment

The 1963 amendment, in subds. (a), (b)

and (c), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

The 1971 amendment inserted "or before change of ownership to a feeder purchaser" near the beginning of subdivision (a).

46-806. Penalties for violations of act. (a) to (e). * * * [Same as parent volume.]

(f) Upon conviction of any person, firm, association, or corporation under this act, they shall be fined in a sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for a period of not more than six (6) months, or shall be punished by both such fine and imprisonment. Of all fines assessed and collected under the provisions of this act, fifty per cent (50%) thereof shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the livestock commission, and fifty per cent (50%) thereof shall be paid into the general fund of the county in which the conviction occurred.

History: En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957; amd. Sec. 94, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subd. (f), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

46-809. Order requiring sheep removal permits—petition by sheep raisers. The livestock commission shall, within sixty (60) days of the filing of a petition signed by not less than fifty-one per cent (51%) of the sheep raisers owning not less than fifty-one per cent (51%) of the sheep in any county of the state requesting such action, make an order requiring a permit for the removal of any sheep from such county.

History: En. Sec. 1, Ch. 135, L. 1963.

Title of Act

An act to authorize the Montana livestock commission, upon petition of fifty-one per cent (51%) of the sheep raisers owning fifty-one per cent (51%) of the sheep in any county of the state, to re-

quire a permit for the removal of sheep from such county; providing for the form and issuance of such permits; providing that it shall be a misdemeanor to remove sheep from such a county without a permit; and providing for the manner of removing the requirement for such a permit.

46-810. Permit required for removal of sheep after order—violation as misdemeanor. From and after the date of any order of the livestock commission requiring a permit for the removal of sheep from any county, it shall be unlawful for any person to remove sheep from such county without a permit, and any person removing, authorizing or assisting in the removal of sheep from such county without a permit shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 135, L. 1963.

46-811. Form and issuance of permits—fee. Before making any order under this act, the livestock commission must provide for the form of the permit and for issuance of such permits by livestock inspectors in the affected county. Fee for issuance of such permit shall be fifty cents (50¢).

History: En. Sec. 3, Ch. 135, L. 1963.

46-812. Publication of notice of sheep removal permit order. Before the effective date of any order made under this act, the commission must publish a notice containing the text and effective date of the order at least three (3) times in a paper of general circulation in the county and must cause a copy of the order to be mailed to every sheep raiser in the county.

History: En. Sec. 4, Ch. 135, L. 1963.

46-813. Removal of permit requirement. Upon receipt of a petition signed in the same manner as that specified in section 1 [46-809] of this act, requesting the removal of the permit requirement, the livestock commission shall, at its next meeting, make an order removing the permit requirement.

History: En. Sec. 5, Ch. 135, L. 1963.

CHAPTER 9—LIVESTOCK MARKETS—INSPECTION AND QUARANTINE —LICENSE AND BONDING

- Section 46-904. State treasurer to hold proceeds of sales of stray stock.
 46-911. License fee.
 46-918.1. Operator of market to issue a receipt for livestock consigned.

46-901. (3328) Public markets—record books of sales of livestock.

References

Application of Baker Sales Barn, Inc.,
 140 M 1, 367 P 2d 775, 778.

46-904. (3331) State treasurer to hold proceeds of sales of stray stock.
 When the provisions of this law shall have been fully complied with, and the money paid into the state treasury, two years after its receipt from the state livestock commission, the state treasurer shall be required to hold such money in the agency fund and his books shall show all information with respect to the sale and proceeds from each animal, in accordance with the published yearly report of the livestock commission, and such money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of such money for the period of one year, after which it shall become state property and be placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 96, L. 1907; Sec. 1818, Rev. C. 1907; re-en. Sec. 3331, R. C. M. 1921; amd. Sec. 106, Ch. 147, L. 1953.

Amendment

The 1963 amendment substituted "the

agency fund" for "a separate fund, to be known and designated as the 'stray stock fund'"; and substituted "earmarked revenue fund for the use of the livestock commission" for "livestock commission fund" at the end of the section.

46-907. Regulation of livestock markets.

Powers of Livestock Commission

The discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for

certificate to operate a livestock market is limited by section 46-909. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-908. Certificate to operate livestock market required, etc.

Governmental Licensing

Livestock markets are proper subjects for governmental licensing on the basis of convenience and necessity. Application of

Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 779. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-909. Hearing and procedure—limitation upon issuance of certificates.

Discretionary Power of Commission

This section limits the discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for certificate to operate a livestock market. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

operation of a livestock market, evidence may be introduced pertaining to markets outside of Montana but it has effect only so far as the effects on existing markets in the state are concerned. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 782. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Sufficiency of Evidence

In a proceeding to obtain a certificate of public convenience and necessity for

Refusal of certificate of public convenience and necessity for operation of a livestock market was justified where evidence of the applicants showed only convenience as to distances, desirability for community and a border-line market

economically. Application of Baker Sales (Dissenting opinions 140 M 1, 367 P 2d Barn, Inc., 140 M 1, 367 P 2d 775, 781. 775, 783, 784.)

46-911. License fee. Every person operating a livestock market in this state shall be required to pay on May 1st, annually, a license fee of one hundred dollars (\$100.00) to the livestock commission. All fees provided for under this act shall be paid into the state treasury, and shall be placed by the state treasurer to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 6, Ch. 193, L. 1945; earmarked revenue fund for use of the
amd. Sec. 95, Ch. 147, L. 1963. livestock commission" for "the livestock
commission fund" at the end of the sec-
tion.

Amendment

The 1963 amendment substituted "the

46-917. Appeal by licensee or applicant for certificate, etc.

Review by District Court

On review provided in the district court under this section it is the duty of the court to examine the records made before the livestock commission to determine whether the commission acted "capri-

ciously, arbitrarily, or abused its discretion and whether it acted according to law." Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-918.1. Operator of market to issue a receipt for livestock consigned. Any person operating a "livestock market" as defined by section 46-906, R. C. M. 1947, which must have a certificate issued by the Montana livestock commission according to section 46-908, R. C. M. 1947, shall issue a receipt to any person, firm, partnership, or corporation selling livestock through a livestock market showing the number and description of livestock he has consigned for sale.

History: En. Sec. 1, Ch. 34, L. 1969.

Title of Act

An act requiring any person who operates a livestock market and obtains a certificate issued by the livestock commis-

sion according to section 46-908, R. C. M. 1947, to issue a receipt to any person, firm, partnership, or corporation selling livestock through a livestock market showing the number of livestock he has consigned.

CHAPTER 10—ESTRAYS—DISPOSAL OF

Section 46-1005. "Estray," as herein used, defined.

46-1006. Publication of description of estrays sold—disposition of proceeds remaining in state treasury.

46-1005. (3337) "Estray," as herein used, defined. An estray within the meaning of this act shall be any horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb, not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district wherein such animal may be found, by inquiry among reputable resident stock owners or freeholders therein; or any of such animals bearing a recorded brand but the owner of which brand cannot be located at or through the post office designated upon the records of the recorder of marks and brands, or which owner cannot be located by the stock inspector of the district where such estray is found by inquiry among reputable resident stock owners or freeholders therein; or any of the animals above

enumerated which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district wherein said animal is found, by inquiry among reputable resident stock owners or freeholders therein.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1959; amd. Sec. 1, Ch. 37, L. 1963.

Repealing Clause

Section 2 of Ch. 37, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment extended the section to include sheep and lambs.

46-1006. (3338) Publication of description of estrays sold—disposition of proceeds remaining in state treasury. A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two (2) consecutive weekly or semimonthly or monthly issues next after May first of each year in not more than four (4) weekly or semimonthly or monthly publications in the state of Montana, said publications to be designated by the state livestock commission, and when such publication shall have been made and the proceeds from the sale of such animals shall have remained in the hands of the state treasurer for a period of two (2) years, it shall be, by the treasurer, upon request of the state livestock commission, at once placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1927; amd. Sec. 1, Ch. 95, L. 1941; amd. Sec. 107, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund for the use of the livestock commission" for "state livestock commission fund" at the end of the section.

CHAPTER 11—HIDES OF SLAUGHTERED CATTLE—REGULATION— HIDE DEALERS' LICENSES

Section 46-1107. Hide dealer or buyers license fee—disposition of proceeds.

46-1107. (3350.8) Hide dealer or buyers license fee—disposition of proceeds. Every hide dealer or buyer shall pay to the livestock commission a license fee of five dollars (\$5.00) for each established place of business at which such hide dealer or buyer purchases or deals in hides, before engaging in, or conducting any business as such in the state of Montana, which license shall continue in force and effect for that calendar year. The moneys collected from such licenses shall be placed in the earmarked revenue fund, livestock commission account. The license must be renewed January 1 of each year commencing January 1, 1961.

History: En. Sec. 2, Ch. 151, L. 1929; amd. Sec. 2, Ch. 177, L. 1939; amd. Sec. 5, Ch. 44, L. 1961; amd. Sec. 4, Ch. 248, L. 1965.

Amendment

The 1965 amendment substituted "earmarked revenue fund, livestock commission account" for "livestock commission fund" at the end of the second sentence.

CHAPTER 14—LEGAL FENCES—LIABILITY OF OWNERS FOR
TRESPASSING STOCK

Section 46-1411. Marking land and mining claims in national forest.

46-1413. Marking—right of action against trespassing stock.

46-1411. (3380) Marking land and mining claims in national forest.

It shall be the duty of the owner, or the person holding possessory right, to all unfenced lands, or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921;

Amendment

re-en. Sec. 3380, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1963.

The 1963 amendment inserted "or unpatented" before "mining claims" in two places.

46-1413. (3382) Marking—right of action against trespassing stock.

No person owning or possessing agricultural or grazing land, or patented or unpatented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said livestock so trespassing strayed thereon on their own inclination and without being driven, or whether said livestock were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the landowner or his duly authorized agent shall within six months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

History: En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1927; amd. Sec. 2, Ch. 31, L. 1963.

Repealing Clause

Section 3 of Ch. 31, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" near the beginning of the section; and substituted "livestock" for "sheep" before "so trespassing" and before "were herded or driven."

Effective Date

Section 4 of Ch. 31, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 2, 1963.

CHAPTER 19—BOUNTIES FOR KILLING WILD ANIMALS— KILLING DOGS INJURING LIVESTOCK

- Section 46-1901. Five per cent of county license money to be used for payment of bounty claims.
- 46-1903. Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys.
- 46-1904. Disposal of proceeds from sale of skins, hides and specimens—presenting to museums.
- 46-1912. Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums.
- 46-1914. Levy of tax for purpose of paying for destruction of wild animals—limitation on levy.
- 46-1915. Penalty for fraudulent claims.

46-1901. (3414) Five per cent of county license money to be used for payment of bounty claims. For the purpose of providing for the payment of bounty claims five per cent of all license money collected by the several county treasurers of the state shall be paid over by said county treasurers to the state treasurer and shall by the latter be deposited in the earmarked revenue fund.

History: En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R. C. M. 1921; amd. Sec. 97, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "there is

hereby created a fund to be known as the state bounty fund which shall consist of" before "five per cent"; deleted "and said moneys" before "shall be paid over"; and substituted "the earmarked revenue fund" at the end of the section for "the state bounty fund."

46-1903. (3417.2) Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys. (a) and (b). * * * [Same as parent volume.]

(c) Subject to the constitutional authority of the state board of examiners, the Montana livestock commission shall administer and expend for predatory animal extermination and control, in production of livestock and poultry in the state of Montana all the moneys that are or may be made available to it, including the moneys from the levy under section 9 of article XII of the Constitution of Montana and section 84-5214, enacted pursuant to such provision of the constitution, and all such moneys as are made available to said commission by appropriations made by the legislative assembly for predatory animal control by said commission. The commission shall expend said funds for predatory animal control by all effective means, including employment of hunters, trappers and other personnel, procurement of traps, poisons, equipment and supplies, and, also, for the payment of bounties within the sound discretion of the commission, as advised by the advisory agencies aforesaid, and responsive to the necessities of control in various areas of the state. The commission shall not consider or approve any claims against funds available to it, in excess of the amounts available in any biennium, and no warrants shall be issued or registered for any such claims whether for bounties or for any other purposes.

(d). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 73, L. 1923; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963.

Amendment

The 1963 amendment in the first sentence of subsection (c) deleted "shall have,

and it is hereby invested with control and supervision of the state bounty fund, and it" which followed "Montana livestock commission" and deleted the words "in said fund" which followed the words "moneys that are or may be made available to it"; and in the last sentence of subsection (c) deleted the words "said state bounty fund, or against additional" which followed the words "claims against."

Cross-References

Advisory committee abolished, sec. 82A-1305.

46-1904. (3417.3) Disposal of proceeds from sale of skins, hides and specimens—presenting to museums. All furs, skins and specimens, taken by hunters or trappers, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charges to any state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923; amd. Sec. 99, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "whose

salaries may be paid in whole or in part out of the fund herein created" which followed "hunters or trappers"; and substituted "earmarked revenue fund" for "bounty fund."

46-1912. (3417.11) Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums. If, at the end of any bounty paying season, there shall be a surplus of moneys available for the administration of Chapter 19, Title 46, R.C.M. 1947, such surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of such moneys, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charge to any state museum or institution.

History: En. Sec. 8, Ch. 109, L. 1925; amd. Sec. 100, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "of moneys available for the administration of

Chapter 19, Title 46, R.C.M. 1947" for "in the state bounty fund" in the first paragraph; and in the second paragraph substituted "such moneys" for "the fund herein created" and "earmarked revenue fund" for "bounty fund."

46-1914. (3417.13) Levy of tax for purpose of paying for destruction of wild animals—limitation on levy. The department of state whose duty it is to fix tax levies, shall annually prescribe the levy recommended by the livestock commission to be made against livestock of all classes, for the purpose of paying for the destruction of wild animals killed within the state, which tax in any one year shall not exceed one and one-half (1½) mills on a dollar upon the assessed valuation of such livestock, and such moneys so received shall be used and applied only to the payment of claims for the destruction of wild animals and to the administration of the provisions of this act, approved by the livestock commission, and the moneys received for the taxes so levied shall be transmitted

annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed to the credit of the earmarked revenue fund, and such moneys shall thereafter be paid out on claims approved as aforesaid, in accordance with the law governing the payment of claims.

History: En. Sec. 10, Ch. 109, L. 1925; amd. Sec. 24, Ch. 97, L. 1961; amd. Sec. 101, Ch. 147, L. 1963.

Amendment

The 1963 amendment omitted a former first sentence which read: "There is hereby created a fund, to be known as

the 'bounty fund'; deleted "The tax commission, or" at the beginning of the present text; substituted "earmarked revenue fund" for "bounty fund" near the end of the section; and deleted "and all moneys in said fund are hereby appropriated for such purposes" at the end of the section.

46-1915. (3417.14) Penalty for fraudulent claims. Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with the intent to obtain the bounty on the same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining the same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and that two-thirds of the fine, if the same be collected, or can be collected, shall be given to the informer, and the balance be deposited in the earmarked revenue fund and used for the administration of this act.

History: En. Sec. 11, Ch. 109, L. 1925; amd. Sec. 102, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "de-

posited in the earmarked revenue fund and used for the administration of this act" for "converted into the state bounty fund" at the end of the section.

CHAPTER 20—IMPOUNDING LIVESTOCK OR DOMESTIC ANIMALS

46-2001. (5175) Impounding animals—duties of cities and towns.

Cross-Reference

Livestock running at large in emergency

road construction areas, secs. 32-319 to 32-321.

CHAPTER 21—SHEEP—PROTECTION FROM PREDATORY ANIMALS—TAX

Section 46-2102. County commissioners may require per capita license fee on sheep.
46-2104. Duty of county commissioners—petition of sheep owners.

46-2102. County commissioners may require per capita license fee on sheep. To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners

or persons in possession of any sheep, coming one year old or over, in the county on the regular assessment date of each year to pay a license fee of not exceeding fifteen cents (15¢) per head of sheep so owned or possessed by him in the county; provided that all owners or persons in possession of any sheep, coming one year old or over, coming into the county after the regular assessment date and subject to taxation under the provisions of section 84-6008 shall also be subject to payment of the license fee herein prescribed. Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license fee is or may become a lien, then said license fee shall be payable immediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate. When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only. The word "owners" or "persons" shall include natural persons, copartnerships, corporations, trusts and estates.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965.

Amendment

The 1965 amendment increased the maximum license fee specified in the first sentence from ten to fifteen cents per head.

46-2104. Duty of county commissioners—petition of sheep owners. In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program, and cause said licenses to be secured and issued and the fees collected for the following year in such amount, not exceeding the limits of fifteen cents (15¢) per head of sheep as shown by said assessment rolls, as will defray the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied.

If the resident owners of at least fifty-one per cent (51 %) of the sheep in the county either (a) petition for an increase in the license fee, subject always to the maximum limitation of fifteen cents (15¢) per head of sheep, or (b) petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.

History: En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957; amd. Sec. 2, Ch. 87, L. 1965.

Amendment

The 1965 amendment increased the maximum license fee specified near the end of the second sentence and in clause (a) of the final sentence from ten to fifteen cents per head.

CHAPTER 23—GRASS CONSERVATION—GRAZING DISTRICTS

Section 46-2305. Secretary—compensation.

46-2306. Compensation of members—auditing and payment of claims.

46-2322. Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring preferences to other lands.

46-2331. Fees may be imposed by commission against districts.

46-2303. Montana grass conservation commission, etc.

Cross-References

Commission abolished and functions transferred, sec. 82A-1502.

46-2305. Secretary—compensation. The commission shall select and appoint a secretary at a salary in such amount as may be specified by the legislative assembly in the appropriation to the grass conservation commission. If the legislative assembly does not specify the maximum salary of the secretary, it shall be fixed by the commission after approval by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The secretary shall be the executive officer of the commission and shall be controlled and directed by the rules and regulations established by the commission from time to time and applicable to the duties of his office.

History: En. Sec. 5, Ch. 208, L. 1939; amd. Sec. 1, Ch. 13, L. 1949; amd. Sec. 1, Ch. 124, L. 1953; amd. Sec. 2, Ch. 257, L. 1955; amd. Sec. 1, Ch. 24, L. 1967; amd. Sec. 3, Ch. 237, L. 1967.

Amendments

Chapter 24, Laws of 1967, increased the maximum salary of the secretary of the grass conservation commission from \$500 per month to \$10,000 per year.

Chapter 237, Laws of 1967, substituted the latter part of the first sentence, beginning with "in such amount," for a clause fixing the secretary's maximum salary at \$500 per month; inserted the second and third sentences; and deleted a final sentence providing for the commission to fix the secretary's salary.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 24 and once by Ch. 237. Chapter 24 was approved February 10, 1967, and Ch. 237 was approved March 1, 1967. Since the amendments are irreconcilable, the text of Ch. 237 is used above.

46-2306. Compensation of members—auditing and payment of claims.

The members of the commission shall receive no compensation for their services other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten dollars (\$10.00) per diem for each day actually in attendance at such board meetings. The per diem of each member of the board shall be limited to not exceed the amount of five hundred dollars (\$500.00) per year, such per diem and expenses to be audited, allowed and paid as herein provided.

The commission shall audit all claims, accounts or bills for expenses, per diem, or expenditures incurred by it or its employees. If the commission approves them they shall be processed as provided by law and paid from the moneys of the Montana grass conservation commission in the earmarked revenue fund; provided that the board may by resolution authorize the secretary to audit and certify all expenses, salaries, and expense accounts of the commission, or its employees, and such audit shall be made a part of the commissioner's report as provided in section 2 [82-4002] of this act.

History: En. Sec. 6, Ch. 208, L. 1939; amd. Sec. 1, Ch. 61, L. 1945; amd. Sec. 25, Ch. 97, L. 1961; amd. Sec. 155, Ch. 147, L. 1963; amd. Sec. 15, Ch. 93, L. 1969.

Amendments

The 1963 amendment substituted "moneys of the Montana grass conservation commission in the earmarked rev-

enue fund" for "state grass conservation fund" in the second sentence of the second paragraph.

The 1969 amendment substituted "as provided in section 2 of this act" for "to the governor, a copy of which shall be sent to all state districts coming under the provisions of this act" at the end of the second paragraph.

46-2322. Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring preferences to other lands. Grazing preferences shall run with and be appurtenant to the dependent commensurate and commensurate property upon which they are based. They shall not be subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process, or transaction, except as provided in this section or in the bylaws of a state district. Upon application by a permittee, the state district with the approval of the grass conservation commission may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability, provided that in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto, for five (5) consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer. Provided further, that such transfer will not interfere with the stability of livestock operations or with proper range management and will not affect adversely the established local economy, and provided further, that no such transfer will be allowed without the written consent of the owner or owners and any encumbrances of the dependent commen-

surate or commensurate property from which the transfer is to be made and provided further, that such transfer shall not in any case become effective until approved by the grass conservation commission. The provision of the section shall not be construed to apply to trespass violations.

When such application is presented to the board the secretary upon the direction of the board shall give notice thereof, setting forth in general said application and the time and place of hearing thereon as fixed by the board, and a copy of said notice shall be given or mailed to the applicant and shall be published for at least once a week for two successive weeks prior to such meeting in a newspaper published or generally circulated within the district, and said notice shall also be posted for at least two full weeks prior to such meeting in three (3) public places within said district, and the date of hearing must be at least fifteen (15) days from the first publication of said notice, and at such hearing the directors shall fully hear and determine such application and objections thereto if any.

Upon the allowance of a transfer under this section, the property from which the transfer is made shall lose its grazing preference to the extent of the preference transferred.

All expenses involved under the application shall be borne by the applicant.

When the land to which a preference is attached shall change its control or ownership such preference shall change with the land, provided, that the person to which such control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees. If such person fails to secure such nonuse permit or refuses to pay such grazing fees, the preferences may be revoked by the state district. If any person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of such land by registered mail that the preference attached to such land will be revoked unless such owners shall pay the usual grazing fees to the state district within sixty (60) days from the time of receipt of such notice. The state district may revoke such preference if the owner or mortgagor does not pay such fees or secure a nonuse permit.

If any permittee fails to pay grazing fees or assessments levied by the state district, or fails to obtain a nonuse permit or violates any of the rules and regulations of the state district, the state district may notify such permittee and owner of such land by registered mail that the preference attached to such land will be revoked unless such grazing fees or assessments are paid or such permittee ceases to violate the rules and regulations laid down by the district within sixty (60) days from the time of receipt of such notice. The state district may revoke such preference if the permittee or owner fails to pay such charges or make such compliance.

When a preference is revoked, it shall be detached from the dependent commensurate or commensurate property to which it was formerly appurtenant. The preference shall immediately shift to the state district. The state district may then allocate it to either dependent

commensurate or commensurate property in the manner provided by its bylaws.

In all cases where notices are given permittees under this act by registered mail and addressed to the post-office address of such permittee as shown by the records of such grazing district such notices shall be deemed received by the permittee when deposited in the United States post office by the district or by the commission.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971.

Amendments

The 1971 amendment deleted "owned or controlled by the permittee" following "transferred to other property" in the third sentence of the first paragraph; and made a minor change in punctuation.

46-2330. Repealed.

Repeal

This section (Sec. 28, Ch. 208, L. 1939), relating to the state grass conservation

fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-2331. Fees may be imposed by commission against districts. The state grass conservation commission shall have authority and right to impose such fees against the several state grazing districts of the state of Montana and in an amount not in excess of ten cents (10¢) per animal unit based upon the number of animal units per year for which the district grants permits, to defray any or all expenses created by the state grass conservation commission. These fees shall be held in the earmarked revenue fund, to be expended by order and direction of the state grass conservation commission for the administration of the commission. If any state district fails or refuses to pay such fee or fees on or before the first day of October of each year, and after such district shall have been provided with a full report from the commission of all moneys collected and expended by it for its fiscal year next preceding that date, the commission shall have authority to compel and levy, collection and payment by writ of mandate or other appropriate remedy against said state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971.

Amendments

The 1963 amendment substituted "earmarked revenue fund" for "state grass conservation fund, herein created" in the second sentence.

The 1971 amendment deleted from the end of the first sentence "and said state grass conservation commission * * * when so collected"; deleted "When such

appropriation by the state of Montana is repaid" from the beginning of the second sentence; substituted "These fees" at the beginning of the second sentence for "the balance of such funds"; deleted "further" before "administration of the commission" in the latter part of the second sentence; deleted "and thereafter said commission shall be maintained by funds obtained from the livestock fees hereinbefore provided" from the end of the second sentence; and substituted "October" for "May" in the last sentence.

CHAPTER 24—RENDERING OR DISPOSAL PLANTS—LICENSING
—REGULATION

46-2412. Disposal of hides, etc.

Compiler's Notes

Sections 46-1101, 46-1108 to 46-1111, referred to in this section in the parent vol-

ume, were repealed by Sec. 7, Ch. 44, Laws 1961.

CHAPTER 27—COUNTY LIVESTOCK PROTECTIVE COMMITTEES

Section 46-2706. Discontinuing county livestock protective committee.

46-2706. Discontinuing county livestock protective committee. Upon receipt of a petition or petitions signed as provided in section 46-2701, the board of county commissioners shall discontinue said county livestock protective committee, provided, however, that such action in discontinuing said committee shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing that no district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 6, Ch. 168, L. 1953;
amd. Sec. 2, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall" for "may" before "discontinue"; and added "and further providing * * * indebtedness against it" at the end of this section.

CHAPTER 28—CATTLE PROTECTIVE DISTRICTS

- Section 46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners.
 46-2802. Selection of cattle protective committee members.
 46-2803. Powers and duties of protective committees.
 46-2804. Tax levy—deposit of proceeds.
 46-2805. Removal of area from protective district—discontinuance of district—levy saved.
 46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners.
 46-2807. Selection of cattle protective committee members.
 46-2808. Powers and duties of protective committees.
 46-2809. Tax levy—deposit of proceeds.
 46-2810. Discontinuance of district—levy saved.

46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county to be wholly or partially included in the district. Such petitions must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected. Upon receipt of such a petition each board of county commissioners must within thirty (30) days declare the designated portion of its county a part of such cattle protective district and the district shall be formed immediately upon the action of the last board of county commissioners to act.

History: En. Sec. 1, Ch. 181, L. 1963.

Title of Act

An act to authorize the creation and operation of cattle protective districts embracing all or portions of two or more

counties, providing for the appointment of district cattle protective committees, providing for the powers, duties and financing of such cattle protective districts.

46-2802. Selection of cattle protective committee members. Each county wholly or partially included in such district shall be entitled to three (3) members of the district cattle protective committee who shall be chosen in the same manner as members of county cattle protective committees under section 46-2701, R.C.M. 1947.

History: En. Sec. 2, Ch. 181, L. 1963.

46-2803. Powers and duties of protective committees. District cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of Chapter 27, Title 46, R.C.M. 1947.

History: En. Sec. 3, Ch. 181, L. 1963.

46-2804. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 181, L. 1963.

46-2805. Removal of area from protective district—discontinuance of district—levy saved. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in section 46-2801 of this act, a board of county commissioners shall remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district, provided, however, that such action in discontinuing said district or part of district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing, that no district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 181, L. 1963; amd. Sec. 1, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall"

for "may" before "remove the area"; added "and further providing * * * indebtedness against it" at the end of the section; and made a minor style change.

46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing part of one county in the state of Montana may be formed upon the filing of a petition by cattle growers within said district with the board of county commissioners in said county. Such petition must be

signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of the cattle for the protection of which the district is to be formed residing within the area designated. Upon receipt of such petition, the board of county commissioners must within thirty (30) days declare the designated portion of its county a cattle protective district and the district shall be formed immediately thereafter.

History: En. Sec. 1, Ch. 91, L. 1965.

Title of Act

An act relating to the formation of a cattle protective district within any

county in the state of Montana and providing for its formation and for its powers and duties, including organization, tax levy, and discontinuance.

46-2807. Selection of cattle protective committee members. Each cattle protective district shall be entitled to three (3) members, who shall be chosen in the same manner as members of a county cattle protective committee under section 46-2701, R. C. M., 1947.

History: En. Sec. 2, Ch. 91, L. 1965.

46-2808. Powers and duties of protective committees. Such district cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of chapter 27, Title 46, R. C. M., 1947.

History: En. Sec. 3, Ch. 91, L. 1965.

46-2809. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 91, L. 1965.

46-2810. Discontinuance of district—levy saved. Upon receipt of a petition or of petitions signed in the same number and in the same manner as the petition to form the district, as herein provided, the board of county commissioners shall discontinue the cattle protective district, provided, however, that such action in discontinuing said district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out. No district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 91, L. 1965;
amd. Sec. 3, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall" for "may" before "discontinue"; and added the last sentence.

CHAPTER 29—LIVESTOCK DEALERS

Section 46-2901.	Definitions.
46-2902.	Prohibited conduct.
46-2903.	Licenses.
46-2904.	Bonds.
46-2905.	Inspection of records.
46-2906.	Penalties.
46-2907.	Powers and duties of livestock commission.
46-2908.	Citations.

46-2901. Definitions. When used in this act:

(a) the term "livestock commission" or "commission" means the livestock commission of the state of Montana;

(b) the term "person" means an individual, partnership, corporation, association, or other form of business enterprise;

(c) the term "livestock" means cattle, sheep, swine, horses, mules, and goats;

(d) the term "livestock dealer" means any person who buys livestock (1) for his own account for purposes of resale or slaughter; or (2) for the account of others; or (3) for or on behalf of any dealer; provided, the term "livestock dealer" shall not include a farmer or rancher who buys or sells livestock in the ordinary course of their farming or ranching operation.

(e) the term "meat packer" shall be considered livestock dealer in this act.

History: En. Sec. 1, Ch. 414, L. 1971. **Title of Act**

An act to provide for licensing of livestock dealers and establishing the procedure, rules and regulations therefor.

46-2902. Prohibited conduct. It shall be unlawful for any person to:

(a) carry on the business of a livestock dealer without a valid and effective license issued by the livestock commission under the provisions of section 3 [46-2903] of this act;

(b) carry on the business of a livestock dealer without filing and maintaining a valid and effective surety bond in conformity with section 4 [46-2904] of this act:

(c) carry on the business of a livestock dealer while his current liabilities exceed his current assets;

(d) willfully make or cause to make any false entry or statement of fact in any application, financial statement, or report filed with the livestock commission under this act.

History: En. Sec. 2, Ch. 414, L. 1971.

46-2903. Licenses. (a) Application; fees; renewal. Any person desiring to be licensed as a livestock dealer shall file annually with the livestock commission on or before July 1st, an application for a license to

transact such business on a form prescribed by the commission. The application shall contain the following information:

- (1) the nature of the business to be conducted by the applicant;
- (2) the name or names of persons applying for license, together with their address and permanent residence;
- (3) the full name of each member thereof, if the applicant is a firm, association or partnership or the names of the officers thereof if the applicant is a corporation;
- (4) the post office and principal place of business of the applicant;
- (5) if the applicant is a foreign corporation its principal place of business, without the state, the name of the state in which it is incorporated, and that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state;
- (6) a copy of the financial statement showing current assets and current liabilities, as submitted to the bonding company to secure a bond under the terms of this act.

With the filing of an application for license, the applicant shall submit to the livestock commission the following applicable fee: as a livestock dealer—fee: twenty-five dollars (\$25).

Whenever an applicant has paid the prescribed fee, the livestock commission, except as otherwise provided in this section, shall issue to such applicant a license which shall entitle the licensee to engage in the business specified in his application for a period of one (1) year, unless and until such license is suspended, revoked, or terminated in accordance with provisions of this act.

Each license shall be posted in a conspicuous place in or at the place of business of the licensee for inspection by any person. Each licensee under this act shall be issued a pocket card containing the license number of the applicant and his authority as a livestock dealer and such card shall be carried and maintained and be displayed upon demand as authority as a licensed livestock dealer.

All fees provided for under this act shall be paid in to the state treasury, shall be placed by the state treasurer to the credit of the livestock commission fund.

(b) Refusal of license. The livestock commission shall refuse to issue or renew a license if the applicant:

- (1) has not filed a surety bond in the form and amount required under the provisions of section 4 [46-2904] of this act;
- (2) has not satisfactorily demonstrated that his current assets exceed his current liabilities;
- (3) has been found by the livestock commission to have failed to pay without reasonable cause obligations incurred in connection with livestock transactions;
- (4) has violated the livestock laws of the state of Montana or the United States government;

(5) has practiced fraud in connection with the buying or receiving of animals or the selling, exchanging, or negotiating the sale of livestock or the weighing of the same;

(6) has failed to keep records of all purchases and sales or refused to grant inspection of said records by authorized agents of the livestock commission;

(7) has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended 7 U.S.C. section 181, et seq., or

(8) has failed to comply with a lawful order or orders of the livestock commission.

(c) Suspension and revocation of license. Whenever the livestock commission finds that any livestock dealer has violated the provisions of subsection (b), (c) or (d) of section 2 [46-2902], section 3(b) [46-2903(b)], or section 5 [46-2905] of this act, the livestock commission may, by order, suspend the license of such offender for a period not to exceed one year, except that if the violation is repeated, the livestock commission may, by order, permanently revoke the license of the offender.

Before any license issued under this chapter shall be suspended or revoked, the licensee shall be furnished with a copy of the complaint made against him and a hearing shall be had forthwith thereon before the livestock commission to determine whether such license should be suspended or revoked. The licensee shall be given notice of the time and place of such hearing and such notice shall be served by registered mail at the post-office address listed in the application. Such hearing shall be held not less than ten (10) days nor more than fifteen (15) days after the mailing of such notice. At the time and place set for the hearing, the livestock commission shall take and receive evidence, under oath, with respect to the complaint, and upon such evidence received shall promptly dismiss the proceedings or revoke or suspend such license. On an adverse ruling, the licensee may take appeal to the district court in the county where his principal place of business is located. The district court shall consider only the evidence presented at the livestock commission hearing and such additional evidence as the court, in its discretion, may permit or deem necessary.

(d) Termination. Any license issued under this act shall automatically terminate on the 30th day of June following the issuance of the same, unless the annual fee has been paid, and any such license shall automatically terminate upon termination of the surety bond covering the licensed operation.

History: En. Sec. 3, Ch. 414, L. 1971.

46-2904. Bonds. (a) Every livestock dealer applying for a license under this act shall file with the livestock commission and maintain a fully executed duplicate of a valid and effective bond in the form and amount set forth in this section, or if he is registered and bonded under the provisions of the Packers and Stockyards Act, 1921 (7 U.S.C. section 181

et seq.), shall file a statement in the form prescribed by the livestock commission evidencing that he is maintaining a valid and effective bond or its equivalent under said act.

(b) The amount of each livestock dealer bond filed with the livestock commission shall be not less than five thousand dollars (\$5,000) or such larger amount specified by published regulations of the livestock commission and shall contain the following conditions:

"If the said principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by said principal for his own account or for the accounts of others and if the said principal shall safely keep and properly disburse all funds, if any, which come into his hands for the purpose of paying for livestock purchased for the accounts of others."

(c) Each livestock dealer bond filed with the livestock commission shall contain provisions that (1) any person damaged by failure of the principal to comply with the condition clause of the bond may maintain suit to recover on the bond, and (2) at least thirty (30) days' notice in writing shall be given to the livestock commission by the party terminating the bond.

History: En. Sec. 4, Ch. 414, L. 1971.

46-2905. Inspection of records. Every livestock dealer at all times shall keep and maintain suitable records, to disclose all purchases and sales of livestock. Each livestock dealer shall, during all reasonable times, submit any authorized agent of the livestock commission to have access to and to copy any and all of such records relating to his business.

History: En. Sec. 5, Ch. 414, L. 1971.

46-2906. Penalties. Any livestock dealer who violates the provisions of section (a) or (d) of section 2 [46-2902] of this act, shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six (6) months, or a fine of not more than five hundred dollars (\$500) or both such imprisonment and fine.

History: En. Sec. 6, Ch. 414, L. 1971.

46-2907. Powers and duties of livestock commission. The livestock commission is hereby authorized to enforce the provisions of this act and to promulgate, in the manner provided by law, such rules and regulations as it deems necessary or desirable to carry out the provisions of this act.

History: En. Sec. 7, Ch. 414, L. 1971.

46-2908. Citations. This act may be cited as the "Livestock Dealer Licensing Act."

History: En. Sec. 9, Ch. 414, L. 1971.

Separability Clause

Section 8 of Ch. 414, Laws 1971 read "Separability. If any provision of this act is declared unconstitutional or the applic-

ability thereof to any person or circumstances held invalid, the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby."

TITLE 47—LOANS

- Chapter 1. Loans for use or exchange—loan of money, 47-124.
2. Consumer Loan Act, 47-202, 47-204, 47-205, 47-210, 47-211, 47-214 to 47-216.

CHAPTER 1—LOANS FOR USE OR EXCHANGE—LOAN OF MONEY

Section 47-124. Legal interest.

47-101. (7702) Loan defined.

Cross-References

Retail installment sales, secs. 74-601 et seq.

47-124. (7725) Legal interest. Except as otherwise provided by the Uniform Commercial Code: Unless there is an express contract in writing, fixing a different rate, or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of six per cent (6%) per annum after they become due on any instrument of writing, except a judgment, on an account stated, and on moneys lent or due on any settlement of accounts from the date on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period of less than one (1) year, three hundred and sixty-five (365) days are deemed to constitute a year.

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1933; amd. Sec. 11-130, Ch. 264, L. 1963; amd. Sec. 38, Ch. 234, L. 1971. Cal. Civ. C. Sec. 1917.

Amendments

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

The 1971 amendment inserted "or a law or ordinance or resolution of a public body fixing a different rate on its obligations" after "fixing a different rate" near the beginning of the section.

47-125. (7726) Same—any rate not exceeding ten per cent, etc.

Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by this section and constituted a special law regulating the rate of interest on money, proscribed by section 26, article V of the constitution, the federal court applied the abstention doctrine and postponed further

action until the issue was determined by the supreme court of Montana. *B-W Acceptance Corp. v. Torgerson*, 234 F Supp 214, 216.

Sale of Assets

Where plaintiffs advanced the money and purchased the assets of a business, and at the same time entered an agreement for future resale of a part of the business to defendant, the entire transaction was a sale and contract of sale, rather than a loan, so that the difference in sale prices was not interest subject to the usury statute. *Favero v. Wynacht*, 140 M 358, 371 P 2d 858, 867.

47-126. (7727) Penalty for usury—action to recover, etc.**References**

Favero v. Wynaht, 140 M 358, 371 P 2d 858, 867.

CHAPTER 2—CONSUMER LOAN ACT**Section 47-202. Definitions.**

- 47-204. Scope—exemptions—invalidity of contracts in violation.
- 47-205. When loans in excess of \$1,000 by licensee prohibited—supplementary license to make loans up to \$2,500.
- 47-210. Rates and charges—refunds—past due amounts—excess charges, effect.
- 47-211. Installment payment—contract period.
- 47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy.
- 47-215. Investigations, when—who may be investigated.
- 47-216. Annual examinations—cost of examinations—limitations.

47-201. Act, how cited.**Cross-References**

Retail installment sales, secs. 74-601 et seq.

47-202. Definitions. Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

(a). * * * [Same as parent volume.]

(b) "License" shall mean one or both of the licenses provided for by this act.

(c) and (d). * * * [Same as parent volume.]

(e) "Consumer type loan business" shall mean the business of making loans of two thousand five hundred dollars (\$2,500) or less generally repayable in substantially equal installments.

History: En. Sec. 2, Ch. 283, L. 1959; in subdivision (b); and increased the
amd. Sec. 1, Ch. 233, L. 1971. maximum loan specified in subdivision
(e) from \$1,000 to \$2,500.

Amendments

The 1971 amendment substituted "one or both of the licenses" for "the license"

47-203. Office of consumer loan commissioner, etc.**Cross-References**

Commissioner's office abolished and functions transferred, sec. 82A-402(2).

47-204. Scope—exemptions—invalidity of contracts in violation.

(a) Scope; prohibiting engaging in the business of making loans of two thousand five hundred dollars (\$2,500) or less, except after having obtained a license; exemptions. On or after July 1, 1959, no person shall engage in the business of making loans or advances of money on credit in amounts of two thousand five hundred dollars (\$2,500) or less and

contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance, any charges whether for interest, compensation, consideration, or expense which in the aggregate are greater than ten per cent (10%) per annum, except as provided in and authorized by this act. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, Morris Plan companies, or a person engaged in business as a licensed pawnbroker, or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this act, nor shall any of the provisions of this act apply to any such exempted person.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 283, L. 1959; from \$1,000 to \$2,500; deleted "relating
amd. Sec. 2, Ch. 233, L. 1971. to licensees" after "provisions of this act"

Amendments

The 1971 amendment increased the near the end of subsection (a); and deleted "who is not licensed hereunder" from the end of subsection (a).
maximum loan specified in subsection (a)

47-205. When loans in excess of \$1,000 by licensee prohibited—supplementary license to make loans up to \$2,500. No licensee under the provisions of this act shall lend money in a total sum greater than one thousand dollars (\$1,000) to any borrower or to any borrower and spouse except under the following circumstances and for the following charges: When any person holding a license provided for in section 47-206 desires to make loans for any amount in excess of one thousand dollars (\$1,000) but not exceeding two thousand five hundred dollars (\$2,500) the holder of such license provided for in section 47-206 may apply to the commissioner for a supplementary license and pay therefor an additional license fee of seventy-five dollars (\$75) per calendar year or one-half ($\frac{1}{2}$) of said sum for any period less than six (6) months. The commissioner shall grant, on application, a supplementary license to a holder of a license provided for in section 47-206. Section 47-209 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same. The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in section 47-210 for the first one thousand dollars (\$1,000) of the principal amount of any loan and may contract for and receive charges at rates not in excess of ten dollars (\$10) per year per one hundred dollars (\$100) on that part of the principal amount of any loan exceeding one thousand dollars (\$1,000) but not exceeding two thousand five hundred dollars (\$2,500). Said charges shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth ($\frac{1}{30}$) of a month. Provisions of section 47-210 relating to refunds, fees and charges and the other provisions of this act not in-

consistent with this section shall be applicable to loans made under authority of a supplementary license.

History: En. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971.

Amendments

The 1971 amendment added "or to any borrower and spouse except under the

following circumstances and for the following charges" at the end of the first sentence, and added everything after the first sentence.

47-210. Rates and charges—refunds—past due amounts—excess charges, effect. (a) Maximum rate of charge. Every licensee hereunder may contract for and receive, on any loan of money not exceeding one thousand dollars (\$1,000) in principal amount, charges at rates not in excess of twenty dollars (\$20) per year per one hundred dollars (\$100) on that part of the principal amount of the loan not exceeding three hundred dollars (\$300); sixteen dollars (\$16) per year per one hundred dollars (\$100) on that part of the principal amount of the loan exceeding three hundred dollars (\$300) but not exceeding five hundred dollars (\$500), and twelve dollars (\$12) per year per one hundred dollars (\$100) on that part of the principal amount of the loan in excess of five hundred dollars (\$500) but not exceeding one thousand dollars (\$1,000). Said charges shall be computed at the aforesaid rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(b) to (f). * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965.

Amendment

The 1965 amendment substituted "principal amount" for "amount" near the beginning of subsection (a); inserted "of the principal amount" before "of the loan" in three places in the first sentence of subsection (a); deleted from the end of the first sentence of subsection (a) the words "when the loan is made for a period of

one year, and proportionately at these rates for a greater or lesser amount within said limits or for a greater or lesser period of time"; inserted the second sentence in subsection (a); and made minor changes in phraseology in subsection (a).

Cross-References

Applicability of finance charge limitation imposed by retail installment sales act, secs. 74-602, 74-608.

47-211. Installment payment—contract period. No licensee shall enter into any contract of loan of three hundred dollars (\$300) or less, exclusive of charges, under this act which the borrower agrees to make any scheduled repayment of principal more than twenty-one (21) calendar months from the date of making such contract, nor any contract of loan for more than three hundred dollars (\$300) to and including one thousand dollars (\$1,000) exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than twenty-five (25) calendar months from the date of making, nor any contract of

loan for more than one thousand dollars (\$1,000) to and including two thousand dollars (\$2,000) exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than thirty-seven (37) calendar months from the date of making, nor any contract of loan for more than two thousand dollars (\$2,000) to and including two thousand five hundred dollars (\$2,500) exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than thirty-seven (37) calendar months from the date of making. Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for shall be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five (45) days of the date of the loan and the charges for the number of days in excess of thirty (30) from the date of making may be added to the scheduled amount of said installments.

History: En. Sec. 11, Ch. 283, L. 1959; amd. Sec. 4, Ch. 233, L. 1971.

in the first sentence, and added to the first sentence the provisions relating to loans of more than \$1,000.

Amendments

The 1971 amendment inserted "to and including one thousand dollars (\$1,000)"

47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy. (a) No insurance of any kind shall be written by a licensee, or employee, affiliate or associate of the licensee in connection with any loan except as hereinafter provided.

(b) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(c) Property insurance. When the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(d) Credit life insurance and credit disability insurance. Subject to the laws of this state, credit life insurance and credit disability insurance may be provided at the expense of the borrower and may be pro-

vided by a licensee upon the request of the borrower when the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges. If any loan shall include amounts advanced for insurance premiums and charges such loan shall not in any event exceed two thousand five hundred dollars (\$2,500).

(e) The insurance authorized by this section may be sold, obtained or provided by or through a licensee and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate or associate of the licensee from the sale, provision or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this act.

A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

History: En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965; amd. Sec. 5, Ch. 233, L. 1971.

Amendments

The 1965 amendment substituted "except as hereinafter provided" at the end of subsection (a) for "where the principal amount thereof is three hundred dollars (\$300) or less, and such amount of three hundred dollars (\$300) shall not include any charge for interest, insurance or any other identifiable charge"; inserted subsection (d) and the first paragraph of subsection (e); and substituted "this section" for "this subsection" near the beginning of the second paragraph of subsection (e), formerly the second paragraph of subsection (c).

The 1971 amendment substituted "property" for "tangible personal property" after "may require a borrower to insure" in the first sentence of subsection (c); inserted "and credit disability insurance" in subsection (d); substituted "two thousand five hundred dollars (\$2,500)" for "one thousand dollars (\$1,000)" at the end of subsection (d); and made minor changes in phraseology.

Effective Date

Section 3 of Ch. 15, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 12, 1965.

47-215. Investigations, when—who may be investigated. The commissioner or his duly authorized representatives may at any time investigate any transaction with borrowers and may examine the books, accounts and records in this state to discover violations of this act by (1) any licensee (2) any person who advertises for, solicits or holds himself as willing to make loans in amounts of two thousand five hundred dollars (\$2,500) or less, or (3) any person whom the commissioner has reason to believe is violating or is about to violate the provisions of this act.

History: En. Sec. 15, Ch. 283, L. 1959; amd. Sec. 6, Ch. 233, L. 1971.

Amendments

The 1971 amendment increased the limit specified in clause (2) from \$1,000 to \$2,500, and made a minor change in punctuation.

47-216. Annual examinations—cost of examinations—limitations.

The commissioner shall make an annual examination of the books, accounts and records of every licensee in so far as they relate to transactions with borrowers under this act and may make such additional examinations as the commissioner deems necessary. The expenses of the commissioner incurred in the examination of the books and records of the licensees, shall be charged at the rate of one hundred dollars (\$100) per man per day required to conduct the examinations of the respective licensees. Each licensee shall be billed by the commissioner for the amount so charged to such licensee. If said charge is not paid within thirty (30) days after the mailing of such bill, the license of said licensee may be suspended or revoked.

History: En. Sec. 16, Ch. 283, L. 1959;
amd. Sec. 7, Ch. 233, L. 1971.

Amendments

The 1971 amendment increased the charge specified in the second sentence from \$60 to \$100 per man per day, and made minor changes in phraseology.

TITLE 48—MARRIAGE

- Chapter 1. Marriage defined—how and by whom contracted and authenticated, 48-118.1, 48-142 to 48-150.
2. Annulling marriage, 48-202, 48-203, 48-207.

CHAPTER 1—MARRIAGE DEFINED—HOW AND BY WHOM CONTRACTED AND AUTHENTICATED

- Section 48-118.1. Application for license.
48-142. Legislative intent—public policy.
48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages.
48-144. Application for marriage license—form.
48-145. Advice to license applicants of legislative intent.
48-146. License required for marriage—place of ceremony—county where license issued.
48-147. Applicants under influence of liquor or drug.
48-148. Applicants delinquent in support obligations.
48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period.
48-150. Validity of foreign marriages.

48-101. (5695) What constitutes marriage.

Cross-Reference

Cause of action for breach of promise abolished, sec. 17-1202.

Common-law Marriage

In view of statute recognizing consensual or common-law marriage, presumption that man and woman deporting themselves as husband and wife have entered into lawful contract of marriage is itself proof of marriage, and is overcome as matter of law only when in light of proved facts reasonable men could no longer find in accordance with the presumed fact; presumption was not overcome by the fact that mother claimed a ceremonial marriage and produced no evidence of mutual consent to common-law marriage. *Spradlin v. United States*, 262 F Supp 502.

Finding that claimant and deceased workman had been married at common

law was not supported by evidence, instances of their cohabitation warranting conclusion of meretricious relations as easily as any other. *Miller v. Townsend Lumber Co.*, 152 M 210, 448 P 2d 148.

Right of Consortium

The mutual rights which arise in the husband and wife upon marriage, termed contractual or legal rights, include rights which are embraced within the term consortium. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

Under this section and section 36-101 a woman by her marriage obtains a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F 298, 300, distinguished in *Hall v. United States*, 266 F Supp 671.

48-102. (5696) Repealed.

Repeal

This section (Sec. 51, Civ. C. 1895), relating to the age of consent for marriage,

was repealed by Sec. 12, Ch. 232, Laws 1963.

48-111. (5705) Subsequent marriage—when illegal and void.

Prosecution for Bigamy

Although bigamous marriage may be void from beginning under this section for civil purposes, it nevertheless renders subsequent marriage bigamous under section 94-701 for criminal purposes, unless

defendant can show that previous bigamous marriage was pronounced void, annulled or dissolved by competent court as provided under section 94-702. *Crosby v. Ellsworth*, 431 F 2d 35.

Voidness of Former Marriage

Under section 94-702 voidness of former marriage must have been declared by a court of competent jurisdiction; such a determination of voidness cannot be

made under this section by the person involved to avoid being charged with the crime of bigamy under sections 94-701 and 94-702. *State v. Crosby*, 148 M 307, 420 P 2d 431, 433.

48-113. (5707) Repealed.**Repeal**

This section (Sec. 57, Civ. C. 1895), relating to marriages contracted outside

the state, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-117, 48-118. (5711, 5712) Repealed.**Repeal**

These sections (Secs. 72, 73, Civ. C.

1895), relating to marriage licenses, were repealed by Sec. 12, Ch. 232, Laws 1963.

48-118.1. Application for license. An application for a marriage license shall be filed at least five (5) days before a license shall be issued; provided, that, upon application of either of the parties to a proposed marriage, any judge of a district court may, upon satisfactory evidence being presented to him that either of the parties to the proposed marriage is dangerously ill, such illness being likely to result in death, or upon the request of the parents or guardian, if any, or upon any other circumstance which, in the opinion of the judge of the district court, warrants special dispensation may by order authorize the license to be issued at any time before the expiration of the said five (5) days; provided, further that such judge shall, before issuing such order, require that the parties making application for such marriage license shall be examined under oath, and shall give the reasons why such license should not be withheld by the clerk of the district court for the statutory period. Such order shall be delivered to the clerk of the district court issuing the license and by him retained as prima-facie evidence of his authority to issue the said marriage license within the five (5) day period. The judge or judges of any judicial district may delegate authority to the clerk or clerks of the district court within said district for the purpose of making the determination and entering the order that the five (5) day period may be waived.

History: En. Sec. 1, Ch. 71, L. 1961; amd. Sec. 10, Ch. 232, L. 1963; amd. Sec. 1, Ch. 50, L. 1971.

Amendments

The 1963 amendment added the second proviso to the first sentence.

The 1971 amendment added the last sentence, providing for delegation of authority to clerks of court.

48-118.2. Repealed.**Repeal**

This section (Sec. 2, Ch. 71, L. 1961), relating to applications for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-120. (5714) License—when refused.**Compiler's Notes**

Section 48-118 referred to in this section, was repealed by Sec. 12, Ch. 232,

Laws of 1963. For present law, see sec. 48-143.

48-121. (5715) Repealed.**Repeal**

This section (Sec. 76, Civ. C. 1895), relating to evidence required for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-134. Proof of age, etc.**Compiler's Notes**

Section 48-118, referred to in the first paragraph of this section in the parent

volume, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-142. Legislative intent—public policy. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 1, Ch. 232, L. 1963.

Title of Act

An act relating to marriage; defining legislative intent; defining marriageable age; requiring the delivery of premarital information to applicants; providing for a uniform marriage application form; providing for the issuance of marriage licenses; limiting the issuance of licenses where applicants are under the influence of narcotic drug or alcohol or are failing to support lawful dependents; providing a

procedure for objection to the issuance of marriage licenses; defining the validity and invalidity of marriages performed in other states; amending section 48-118.1, R.C.M., 1947, to provide for testimony under the oath of applicants seeking a waiver of the waiting period between application for and issuance of a marriage license; prohibiting remarriage within six months after divorce; and repealing sections 48-102, 48-113, 48-117, 48-118, 48-118.2 and 48-121, R.C.M., 1947.

48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages. (1) Every male person who has attained the full age of nineteen (19) years or who has obtained the permission of the district judge as provided in subparagraph (3) and every female person who has attained the full age of nineteen (19) years or who has obtained the permission of the district judge as provided in subparagraph (3) shall be capable in law of contracting marriage if otherwise competent.

(2) If either of the contracting parties is under the age of nineteen (19), no license shall be issued without the consent of his or her parents or guardian, or of the parent having the actual care, custody and control of said party, given before the clerk of the court under oath, or certified under the hands of such parents or guardian as aforesaid attested by two adult witnesses, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of the said clerk of court at the time of application for said license. If there is no guardian

or parent having the actual care, custody and control of said party, then the judge of the district court in the county where the application is pending may, after hearing upon proper cause shown, make an order allowing the marriage of said party.

(3) A male under the age of nineteen (19) or a female under the age of nineteen (19) may lawfully contract to marry and obtain a marriage license if there is first procured the consent of the parent or guardian as provided in subparagraph (2) and if the district judge of the county wherein the application is made, after examining the parties under oath, shall decide that it is to the best interest of such applicant and of the established public policy of the state of Montana, and shall authorize the clerk of the court to issue the license in conformance with the other provisions of this act.

History: En. Sec. 2, Ch. 232, L. 1963;
amd. Sec. 13, Ch. 240, L. 1971.

Amendments
The 1971 amendment made changes throughout the section to increase the age of consent from eighteen for males and sixteen for females to nineteen for both parties.

48-144. Application for marriage license—form. The application for a marriage license shall be in form substantially as follows:

THIS IS A SWORN STATEMENT. IF YOU MAKE FALSE STATEMENTS, YOU MAY BE PROSECUTED FOR PERJURY OR FOR FALSE SWEARING.

State of Montana
County of _____

We, the undersigned, in accordance with statements hereinafter contained and the facts set forth herein, which we and each of us do solemnly swear are true and correct to the best of our knowledge and belief, do hereby make application to the _____ of _____ County, Montana, for a license to marry. We further swear that we may lawfully marry and that our application for a marriage license has not been rejected in any county in Montana (except under the circumstances stated below).

Signature of Male applicant _____

Signature of Female applicant _____

A certified copy of a birth certificate or other uncontrovertible evidence of age must be submitted for the examination of each applicant and of the clerk. A certified copy of each divorce decree, decree of annulment, and other decrees or orders relating to the custody, care or support of dependent children must also be furnished for examination.

From the Male Applicant	From the Female Applicant
Full name _____	Full name _____
Race or Color _____	Race or Color _____
Usual Residence _____	Usual Residence _____
Street address or R. F. D. No. _____	Street address or R. F. D. No. _____

City or town, county, state, country
When did your residence in this
county begin? _____

Have there been any interruptions
in your residence in this county
since that date? _____

Date of birth _____ Age _____
month day year last birthday

Usual occupation _____

Industry or business _____

Place of birth _____

Religious denomination _____

(not compulsory)

Full name of FATHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Full name of MOTHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Maiden name of MOTHER _____

Male applicant affirms this

is his _____ marriage.

number

Previous marriages were ended

by: _____

manner

date

place

Children by prior marriages _____

Are you presently in default
of a legal obligation to sup-
port lawful dependent(s)? _____

Are you under the influence
of intoxicating liquor or
narcotic drug? _____

Your blood relationship to
other applicant, if any? _____

If prior application rejected
in another county, state
place, reasons and date: _____

City or town, county, state, country
When did your residence in this
county begin? _____

Have there been any interruptions
in your residence in this county
since that date? _____

Date of birth _____ Age _____
month day year last birthday

Usual occupation _____

Industry or business _____

Place of birth _____

Religious denomination _____

(not compulsory)

Full name of FATHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Full name of MOTHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Maiden name of MOTHER _____

Female applicant affirms this

is her _____ marriage.

number

Previous marriages were ended

by: _____

manner

date

place

Children by prior marriages _____

Are you presently in default
of a legal obligation to sup-
port lawful dependent(s)? _____

Are you under the influence
of intoxicating liquor or
narcotic drug? _____

Your blood relationship to
other applicant, if any? _____

If prior application rejected
in another county, state
place, reasons and date: _____

Sworn and subscribed to before
me this _____ day of _____
_____ A.D., 19____

Signature

Title

Future Address

Marriage to take place _____
_____ date _____

Enter here exact future address
after marriage, if known _____

place (city and county)

street address

Application filed _____
_____ date _____

city or town

state

License issued _____
_____ date _____

History: En. Sec. 3, Ch. 232, L. 1963.

48-145. Advice to license applicants of legislative intent. At the time of application for such license, the clerk of the district court shall give to each of the applicants (or mail to an applicant who completes his part of the application outside of the state) a card with the statement of legislative intent printed thereon. Such cards shall be procured by the clerk of the district court at the expense of the county and shall be in form substantially as follows:

MARITAL INFORMATION

Your marriage license will be issued to you under the provisions of Title 48 of the Montana statutes. For your information and advice, that title includes the following provision:

INTENT. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 4, Ch. 232, L. 1963.

48-146. License required for marriage—place of ceremony—county where license issued. No Montana resident shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties

has resided for at least five (5) days immediately prior to making application therefor.

A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

If both parties be nonresidents of the state, such license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of such persons is a nonresident of the county where such license is to issue, his part of the application may be completed sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963.

48-147. Applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: En. Sec. 6, Ch. 232, L. 1963.

48-148. Applicants delinquent in support obligations. No license to marry shall be issued by any clerk of the district court if either of the applicants for a license is or has been failing to support lawful dependents when ordered to do so by a court having jurisdiction, unless a judge of a court of record after hearing shall determine that despite such failure said applicant is financially able to discharge the duty to support existing dependents and those resulting from the contemplated marriage and shall authorize the clerk to issue the license. The judge shall have authority to require that the applicant post sufficient security to insure the performance of the support obligation to existing dependents.

History: En. Sec. 7, Ch. 232, L. 1963.

48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period. (1) Immediately upon entering an application for a license, the clerk of the district court shall post in his office a notice giving the names and residences of the parties applying therefor, and the date of the application. Any parent, grandparent, child, or natural guardian thereof if a minor, brother, sister or guardian of either of the applicants for a license, or either of the applicants, or the county attorney, believing that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, may file with the district court in the county in which the license is applied for, a petition under oath, setting forth the grounds of objection to the marriage and asking for an order requiring the parties making such application to show cause why the license should not be refused. Whereupon, said court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court may direct, but not more than fourteen (14) days after the date of said order, which shall be served forthwith

upon the applicants for such license residing in the state, and upon the clerk before whom such application has been made, and shall operate as a stay upon the issuance of the license until further ordered; if either or both of said applicants are nonresidents of the state said order shall be served forthwith upon said nonresident by publication one time in a newspaper published in the county wherein said application is pending, and by mailing a copy thereof to said nonresident at the address contained in the application.

(2) If, upon hearing, the court finds that the statements in the application are willfully false or insufficient, or that either or both of said parties are not competent in law to marry, the court shall make an order refusing the license, and shall immediately report such matter to the county attorney. If said falseness or insufficiency is due merely to inadvertence, then the court shall permit the parties to amend the application so as to make the statements therein true and sufficient, and upon application being so amended, the license shall be issued. If any party is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to willfulness or negligence, order the license to be issued notwithstanding such insufficiency. The costs and disbursements of the proceedings under this section shall rest in the discretion of the court, but none shall be taxed against any county attorney acting in good faith.

(3) If there be no legal objection to said application for license within five (5) days of the application, the clerk of the district court shall issue a marriage license.

History: En. Sec. 8, Ch. 232, L. 1963.

48-150. Validity of foreign marriages. (1) All marriages which are valid by the law of the state or nation where at least one (1) of the parties was domiciled at the time of the marriage and where both intended to make their home thereafter are valid in this state.

(2) All marriages which are valid by the law of the state or nation where the marriage took place are valid in this state unless invalid under the laws of the state or nation where at least one (1) of the parties was domiciled at the time of marriage and where both intended to make their home thereafter.

(3) The courts of this state may refuse to give a particular effect to a marriage contracted in another state or nation if to do so would be contrary to a strong public policy of this state.

History: En. Sec. 9, Ch. 232, L. 1963.

Repealing Clause

Section 12 of Ch. 232, Laws 1963 read "Sections 48-102, 48-113, 48-117, 48-118, 48-118.2, and 48-121, R. C. M., 1947, are repealed."

48-151. Repealed.

Repeal

This section (Sec. 11, Ch. 232, L. 1963), relating to the waiting period after divorce, was repealed by Sec. 1, Ch. 63, Laws 1967.

CHAPTER 2—ANNULLING MARRIAGE

Section 48-202. Causes for annulling marriages.

48-203. Actions therefor—when and by whom commenced.

48-207. Legitimacy of children unaffected by annulment—custody and support orders.

48-201. (5728) Void marriages.

Necessity for Judicial Declaration

In view of statute providing that either party to void marriage may have it declared so judicially, former statute making it unlawful to marry again until six months after a judgment of divorce meant

that marriage in violation thereof should be void only from time its nullity shall be declared so judicially. State ex rel. Angvall v. District Court, Thirteenth Judicial District, 151 M 483, 444 P 2d 370.

48-202. (5729) **Causes for annulling marriages.** A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of majority, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of majority, such party for any time freely cohabited with the other as husband or wife.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 110, Civ. C. 1895; re-en. Sec. 3636, Rev. C. 1907; re-en. Sec. 5729, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1963. Cal. Civ. C. Sec. 82. Based on Field Civ. C. Sec. 54.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in two places in subd. 1.

48-203. (5730) **Actions therefor—when and by whom commenced.** An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

1. For causes mentioned in subdivision 1: By the party to the marriage who was married under the age of majority within two years after arriving at the age of majority; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of majority.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 111, Civ. C. 1895; re-en. Sec. 3637, Rev. C. 1907; re-en. Sec. 5730, R. C. M. 1921; amd. Sec. 1, Ch. 169, L. 1963. Cal. Civ. C. Sec. 83.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in three places in subd. 1.

48-204, 48-205. (5731, 5732) **Repealed.**

Repeal

These sections (Secs. 112, 113, Civ. C. 1895), relating to children of annulled

marriages, were repealed by Sec. 4, Ch. 169, L. 1963.

48-207. **Legitimacy of children unaffected by annulment—custody and support orders.** A judgment of nullity of marriage does not affect the

legitimacy of children conceived or born before the judgment, and the judgment must so specify, and the court may during the pendency of the action, or at the time judgment is rendered or at any time thereafter make such order for the custody, care, education, maintenance and support of such children during their minority as may seem necessary or proper.

History: En. Sec. 3, Ch. 169, L. 1963.

"Sections 48-204 and 48-205, R.C.M., 1947, are repealed."

Repealing Clause

Section 4 of Ch. 169, Laws 1963 read

TITLE 49—MAXIMS OF JURISPRUDENCE

CHAPTER 1—MAXIMS OF JURISPRUDENCE

49-102. (8739) When the reason of a rule ceases, so should the rule itself.

Change in Trial Judges

Rule that appellate court will not ordinarily disturb findings of fact of trial court where there is conflict in evidence is not

applicable where deciding judge was not judge who heard testimony. *Kostbade v. Metier*, 150 M 139, 432 P 2d 382.

49-103. (8740) Where the reason is the same, the rule should be the same.

References

Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 74.

49-104. (8741) One must not change his purpose to the injury of another.

References

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-106. (8743) One must so use his own rights as not to infringe upon the rights of another.

References

State Highway Commission v. Biastoch Meats, Inc., 145 M 261, 400 P 2d 274;

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-108. (8745) Acquiescence in error takes away the right of objecting to it.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

49-109. (8746) No one can take advantage of his own wrong.

Loss of Right of Survivorship

Where husband feloniously killed his wife, he did not acquire by right of survivorship her share of property held jointly with him, but took the property under a constructive trust, and when he thereafter committed suicide his heirs had no right to wife's share. *In re Cox' Estate*, 141 M 583, 380 P 2d 584.

was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

References

Cited in *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 765; *Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706; *Thisted v. Tower Management Corp.*, 147 M 1, 409 P 2d 813.

Surety's Liability

This statute was one ground for holding surety liable on bond, even though bond

surety liable on bond, even though bond was not in effect at time act occurred giv-

49-113. (8750) He who takes the benefit must bear the burden.

Surety's Liability

This statute was one ground for holding

ing rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

49-114. (8751) One who grants a thing is presumed to grant also whatever is essential to its use.

References

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432.

49-115. (8752) For every wrong there is a remedy.

References

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-119. (8756) The law helps the vigilant, before those who sleep on their rights.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

49-121. (8758) That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

References

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432; *Thisted v. Tower Management Corp.*, 147 M 1, 409 P 2d 813.

49-124. (8761) The law neither does nor requires idle acts.

Contract of Purchase

Where purchaser conditioned annual payment on performance of certain acts by vendor contained in contract, and subsequently brought suit for breach of contract when vendor did not perform such acts, trial court properly entered judgment for vendor on evidence that pur-

chaser, prior to payment, was going to insist on performance by vendor of other acts not contained in contract, since performance of acts specified in contract would have been idle and under this section law does not require performance of idle acts. *Quayle v. Counts*, — M —, 466 P 2d 911.

49-135. (8772) Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

Contract of Sale

In vendor's action against subsequent bona fide purchaser to determine ownership and right to possession of an airplane, vendor was estopped to challenge sale by vendee by failing to record title document to avoid transfer tax, making no inquiry for a number of months about the plane, which he allowed vendee to have, even though the payments were due under the contract, and failing to make a diligent effort to recover the plane after

the payments became due. *Lakes v. Orley*, 148 M 325, 420 P 2d 151, 153.

Surety's Liability

This statute was one ground for holding surety liable on bond, even though bond was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted the premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

TITLE 50—MINES AND MINING

- Chapter 1. Safety in mines other than coal mines, 50-101, 50-102, 50-108, 50-118, 50-119.
7. Location and record of mining and millsite claims, 50-701, 50-702, 50-704.
10. Open cut and strip mined land reclamation, 50-1018 to 50-1033.
11. Dredge mining—preservation of lands, 50-1101 to 50-1114.
12. Reclamation of mining lands, 50-1201 to 50-1224.
13. Notice to landowner of surface operations, 50-1301 to 50-1306.

CHAPTER 1—SAFETY IN MINES OTHER THAN COAL MINES

- Section 50-101. Inspectors of metal and nonmetallic mines—employment.
50-102. Inspections and investigations—access to mine—order to close mine or abate violation—notice—hearing and review.
50-108. To what mines act is applicable.
50-118. Violation of the act—penalties.
50-119. Definitions.

50-101. (3418) Inspectors of metal and nonmetallic mines—employment. The industrial accident board shall employ an adequate number of qualified metal and nonmetallic mine inspectors necessary for the enforcement of this act and shall prescribe their powers, duties and responsibilities.

History: En. Sec. 1, p. 109, L. 1897;
re-en. Sec. 1711, Rev. C. 1907; amd. Sec.
1, Ch. 71, L. 1909; amd. Sec. 1, Ch. 22, L.
1921; re-en. Sec. 3418, R. C. M. 1921;
amd. Sec. 1, Ch. 310, L. 1971.

Amendments

The 1971 amendment rewrote this section. For previous text, see parent volume.

50-102. (3419) Inspections and investigations—access to mine—order to close mine or abate violation—notice—hearing and review. (a) The board is authorized at any time to cause to be made such inspections and investigations as it shall deem necessary in surface and underground mines which are subject to this act (1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, and (2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this act.

(b) For the purpose of making any inspection or investigation authorized by this act, authorized representatives of the board shall have the right of entry to, upon, or through any mine which is subject to this act.

(c) If, upon any inspection of a mine which is subject to this act authorized representatives of the board find that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists, and thereupon issue an order requiring the operator of such mine to cause all persons, except the persons designated below,

whose presence in such area is necessary to eliminate the danger described in such order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary in the judgment of the operator of the mine, to eliminate the danger described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine, who is a person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(d) If, upon any such inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of such period of time as originally fixed or extended, the authorized representative finds that such violation has not been totally abated, and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation; thereupon, the board shall make an order requiring the operator of such mine to cause all persons in such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary, in the judgment of the operator of the mine, to abate the violation described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine who is a person qualified to make examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(e) Findings and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard, and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(f) Each finding made and notice or order issued under this section shall be given promptly to the operator of the mine to which it pertains

by the person making such finding or order, and all such findings, orders, and notices shall be in writing, and shall be signed by the person making them. A notice or order issued by an authorized representative pursuant to this section may be annulled, canceled, or revised by the authorized representative, and in case of a board order, the board may annul, cancel or revise the order.

(g) The order of the duly authorized representative of the board shall remain in effect, but shall immediately be subject to review as provided in this act.

(h) An operator notified of an order made pursuant to section 50-102 (c) may apply to the board for a hearing, revision, or annulment of such order. Whenever the board after such a hearing upon complaint, or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but, if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings, revising or annulling the order under review.

(i) An operator notified of an order made pursuant to section 50-102 (d) may apply to the board for a hearing or revision of such order. If the board finds that there was no violation, it shall make an order annulling the order under review. If the board finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the board finds that such violation was not totally abated, it shall make an order consistent with its findings.

(j) In view of the urgent need for prompt decisions of matters submitted to the board under section 50-102, all actions which the board or its authorized representatives are required to take under this section shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved.

History: En. Sec. 1, Ch. 98, L. 1903; **Amendments**
re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R. C. M. 1921; amd. Sec. 2, Ch. 310, L. 1971. The 1971 amendment rewrote this section. For previous text, see parent volume.

50-103 to 50-107. (3420 to 3424) Repealed.

Repeal relating to inspections and investigation of mine safety, were repealed by Sec. 6, C. 1895; Secs. 2 to 5, Ch. 98, L. 1903, Ch. 310, Laws 1971.

50-108. (3425) To what mines act is applicable. This act shall apply to all mines (except coal and lignite) and individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state. These individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the board, state the name of the mine, the location of the same, the name of the company, person, or persons

owning or operating the same, post-office address, and number of men employed.

History: En. Sec. 6, Ch. 98, L. 1903; re-en. Sec. 1720, Rev. C. 1907; re-en. Sec. 3425, R. C. M. 1921; amd. Sec. 3, Ch. 310, L. 1971.

Amendments

The 1971 amendment rewrote the first portion of the section. For previous version, see parent volume.

50-109 to 50-117. (3426 to 3434) Repealed.

Repeal

Sections 50-109 to 50-117 (Sec. 590, Pol. C. 1895; Secs. 3650 to 3654, Pol. C. 1895; Secs. 1 to 3, Ch. 72, L. 1911), relating to

safety and sanitary standards in mines and penalties for violations, were repealed by Sec. 6, Ch. 310, Laws 1971.

50-118. (3435) Violation of the act—penalties. (a) Whenever an operator (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the board or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the board to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the board any information or report requested by the board and which may reasonably be necessary to carry out the provisions of this act, a civil action for preventive relief, including, but not limited to, an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the board in the district court for the county in which the mine in question is located or in which the mine operator has its principal office.

(b) Any person who knowingly (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the board or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the board to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or of an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the board any information or report requested by the board and which may reasonably be necessary to carry out the provisions of this act, shall be guilty of a misdemeanor, and shall upon conviction thereof be punished for each such offense by a fine of not less than one hundred dollars (\$100), or more than three thousand dollars (\$3,000), or by imprisonment in the county jail not exceeding six (6) months, or both. In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly permits such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both.

History: En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R. C. M. 1921; amd. Sec. 4, Ch. 310, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

50-119. Definitions. "Authorized representative" means mine inspector or any other person employed or authorized by the industrial accident board to perform any and all duties under this act. "Board" means the industrial accident board of the state of Montana. "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession. "Employee" means every person in this state, including a contractor other than an "independent contractor," who is in the service of an employer as hereinafter defined in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise. "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written. "Inspector" means a person or persons employed by the industrial accident board to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this act. "Mine" means any mine (or excavation) when clay, metallic ore, mineral, gypsum, or rock is dug or mined whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground. "Notice" means a written notice, work order or correction notice issued by an authorized representative of the board, which notice specifies a violation(s) and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation(s). "Occupational Health" means any of those health conditions that occur as a result of employment in a mine. "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the board, or any other determination or decision made by the board.

History: En. 50-119 by Sec. 5, Ch. 310, L. 1971.

Title of Act

An act amending sections 50-101, 50-102, 50-108, and 50-118, R. C. M., 1947, adding section 50-119 and repealing sections 50-103, 50-104, 50-105, 50-106, 50-107, 50-109, 50-110, 50-111, 50-112, 50-113, 50-114, 50-115, 50-116, 50-117, R. C. M., 1947, to update the law so that it conforms and

is equal to the Federal Metal and Nonmetallic Safety Act in order that Montana may qualify as and have what is known as a "state approved plan."

Repealing Clause

Section 6 of Ch. 310, Laws 1971 read "Sections 50-103, 50-104, 50-105, 50-106, 50-107, 50-109, 50-110, 50-111, 50-112, 50-113, 50-114, 50-115, 50-116 and 50-117 are hereby repealed."

CHAPTER 4—REGULATION OF COAL MINING INDUSTRY— COAL MINING CODE

50-408, 50-409. (3454, 3455) Repealed.

Repeal

Sections 50-408 and 50-409 (Secs. 10, 11, Ch. 120, L. 1911), relating to the testing of

coal mine scales, were repealed by Sec. 43, Ch. 99, Laws 1969.

50-412. (3459) **Board of examiners of applicants, etc.****Cross-References**

Boards abolished and functions transferred, sec. 82A-1005(3).

CHAPTER 6—REGULATIONS FOR SALE AND MARKETING OF COAL

50-603. (3546.3) **Repealed.****Repeal**

relating to the weight of coal, was repealed by Sec. 43, Ch. 99, Laws 1969.

Section 50-603 (Sec. 3, Ch. 104, L. 1927),

CHAPTER 7—LOCATION AND RECORD OF MINING
AND MILLSITE CLAIMS

Section 50-701. Discovery—notice—marking boundaries—compliance with federal law.

50-702. Record of certificate of location.

50-704. Recording of affidavit of performance of annual work.

50-701. (7365) Discovery—notice—marking boundaries—compliance with federal law. Any person who discovers upon the public domain of the United States, within the state of Montana, a vein, lode, or ledge of rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, or a placer deposit of gold, or other deposit of minerals having a commercial value which is subject to entry and patent under the mining laws of the United States, may, if qualified by the laws of the United States, locate a mining claim upon such vein, lode, ledge, or deposit in the following manner, viz.:

1. * * * [Same as parent volume.]

2. Within thirty days after posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be readily traced. It shall be prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds: (1) A tree at least eight inches in diameter, and blazed on four sides; (2) A post at least four inches square by four feet six inches in length, set one foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock, and surrounded in all cases by a mound of earth or stone at least four feet in diameter by two feet in height. A squared stump of the requisite size, surrounded by such mound, shall be deemed the equivalent of a post and mound; (3) A stone at least six inches square by eighteen inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least four feet in diameter by two feet in height; or (4) A boulder at least three feet above the natural surface of the ground on the upper side. Where other monuments, or monuments of lesser dimensions than those above described, are used, it shall be a question for the jury, or for the court where the action is tried without a jury, as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

3. Within sixty (60) days after posting such notice, the locator shall comply with the United States mining laws.

History: Earlier acts were those of Feb. 11, 1876, governing location of quartz claims, appearing as Secs. 1477 and 1478; 5th Div. Comp. Stat. 1887.

Ap. p. Sec. 3610, Pol. C. 1895; en. Sec. 1, Ch. 16, L. 1907; Sec. 2283, Rev. C. 1907; re-en. Sec. 7365, R. C. M. 1921; amd. Sec. 1, Ch. 4, Ex. L. 1971. Cal. Civ. C. Sec. 1426.

Amendments

The 1971 amendment substituted a new subdivision 3 for the subdivision 3 appearing in the parent volume; corrected a typographical error; and made a minor change in style.

50-702. (7366) **Record of certificate of location.** Within sixty (60) days after posting the notice of location, the locator shall record his location in the office of the county clerk of the county in which such mining claim is situated, and within twenty (20) days thereafter the county clerk shall provide a copy thereof to the department of state lands and investments, Helena, Montana, or its successor agency. Such record shall consist of a certificate of location for each claim containing:

1. The name of the lode or claim, and whether located as a lode or placer claim.

2. The name of the locator or locators, if there be more than one, together with the post-office address of such locator or locators.

3. The date of location, and such description of said claim, with reference to some natural object or permanent monument, as will identify the claim and the section, township, and range wherein the claim is situated (by projected survey lines if located in unsurveyed country).

4. The directions and distances from the discovery point which describe the claim.

Such certificate of location must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified, or a certified copy thereof, is prima facie evidence of all facts properly recited therein. Failure of the locator or locators to record a certificate of location as herein required shall create a prima facie presumption of intent to abandon. However, recordation after the sixty (60) day period but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in section 50-713, R. C. M., 1947, shall be held to affect the prima facie presumption created by this section.

History: Ap. p. Sec. 3612, Pol. C. 1895; amd. Sec. 2, p. 141, L. 1901; amd. Sec. 2, Ch. 16, L. 1907; Sec. 2284, Rev. C. 1907; re-en. Sec. 7366, R. C. M. 1921; amd. Sec. 2, Ch. 4, Ex. L. 1971.

Amendments

The 1971 amendment deleted "and for the purpose of constituting constructive notice of the location" after "notice of location" in the first sentence of the in-

troductory paragraph; added "and within twenty * * * successor agency" to the first sentence of the introductory paragraph; inserted "for each claim" in the second sentence of the introductory paragraph; added "and whether located as a lode or placer claim" to the end of subdivision 1; added "together with the post-office address of such locator or locators" to the end of subdivision 2; added "and the section * * * unsurveyed country" to the end

of subdivision 3; substituted a new subdivision 4 for former subdivisions 4 and 5; deleted the designation of former subdivision 6 and made it the final paragraph; deleted the former first sentence of the present final paragraph; added the last two sentences to the final paragraph; and made a minor change in style.

50-704. (7368) Recording of affidavit of performance of annual work.

The owner of a lode or placer claim who performs or causes to be performed the annual work, or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the claim, must, within ninety (90) days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which such claim or claims is situated an affidavit of his own, or an affidavit of the person who performed such work or made the improvements, showing:

1. The name of the mining claim or claims;
2. The location of the claim or claims by section, township, and range (by projected survey lines if located in unsurveyed country);
3. The book and page numbers wherein the original or latest amended relocation for each claim is recorded;
4. The number of days' work done, and the character and value of the improvements placed thereon, or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;
5. The dates between which such work or improvements were effected;
6. At whose instance the work was done or the improvements made;
7. The actual amount paid for work and improvements, and by whom paid when the same was not done by the owner.

Annual assessment work may be performed or caused to be performed at one (1) or more points within a group of contiguous claims not exceeding ten (10) claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. If annual assessment work is performed or caused to be performed at one (1) or more points within a group of contiguous claims not exceeding ten (10), the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

If group work is claimed for a group of claims crossing county lines, the affidavit required by this section shall be filed for recording within the required time in each of the counties in which such claims are located.

An affidavit of performance of annual assessment work must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer

thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. Such affidavits, or a certified copy thereof, are prima facie evidence of the facts therein stated. The failure to file such affidavits within the period allowed therefor shall be prima facie evidence that such labor has not been performed and that the owner of the claim or claims has abandoned and surrendered same.

History: En. Sec. 1483, 5th Div. Comp. Stat. 1887; amd. Sec. 3614, Pol. C. 1895; re-en. Sec. 7368, R. C. M. 1921; amd. Sec. 3, Ch. 4, Ex. L. 1971. Cal. Civ. C. Sec. 1426m.

Amendments

The 1971 amendment inserted "as permitted and defined by laws of the United States" in the introductory paragraph; substituted "must" for "may" after "forfeiture of the claim" in the introductory paragraph; substituted "ninety (90)" for "twenty" in the introductory paragraph; substituted "expiration of the federal an-

nual assessment work period" for "annual work" in the introductory paragraph; inserted new subdivisions 2 and 3; redesignated former subdivision 2 as subdivision 4 and added to the end "or the verified * * * relied upon"; revised and reworded former subdivision 3 and redesignated it as subdivision 5; redesignated former subdivisions 4 and 5 as subdivisions 6 and 7; added the three paragraphs after the numbered subdivisions; made the former final paragraph into the fourth sentence of the present final paragraph; and made minor changes in phraseology.

CHAPTER 10—OPEN CUT AND STRIP MINED LAND RECLAMATION

- Section 50-1018. Short title.
- 50-1019. Policy of state.
- 50-1020. Contracts with operators for land reclamation—actions for enforcement.
- 50-1021. Definitions.
- 50-1022. Administration—employment of person experienced in mined land reclamation.
- 50-1023. Powers, duties and functions of commission.
- 50-1024. Contract for reclamation required for mining—exception.
- 50-1025. Application for contract—form and contents—bond and fee—amended contract—withdrawing land.
- 50-1026. Terms of bond—security in lieu of bond—substitution of surety—forfeiture of bond—reduction of penalty.
- 50-1027. Judicial remedies.
- 50-1028. Receipt and use of funds.
- 50-1029. Disposition of fees and forfeitures.
- 50-1030. Inspection by commission.
- 50-1031. Mining without contract a misdemeanor—penalty.
- 50-1032. Credit on taxes—inspection of mines—reports to board of equalization.
- 50-1033. Reclamation of land after forfeiture of bond.

50-1001 to 50-1017. Repealed.

Repeal

Sections 50-1001 to 50-1017 (Secs. 1-4, Ch. 245, L. 1967; Secs. 1-13, Ch. 199, L.

1969), relating to strip coal mining and reclamation of lands, were repealed by Sec. 18, Ch. 224, Laws 1971.

50-1018. Short title. This act shall be known and cited as "The Montana Open Cut or Strip Mined Land Reclamation Act."

History: En. Sec. 1, Ch. 224, L. 1971.

Title of Act

An act regulating mining operations; providing for the reclamation of mined

lands; and repealing sections 50-1001 through 50-1017, R. C. M., 1947; and providing an effective date.

50-1019. Policy of state. It is the policy of this state to provide for the reclamation and conservation of land subjected to open cut or strip mining and thereby to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites subjected to or which may be affected by open cut or strip mining to protect and perpetuate the taxable value of property, and to protect and promote the health, safety and general welfare of the people of this state.

History: En. Sec. 2, Ch. 224, L. 1971.

50-1020. Contracts with operators for land reclamation—actions for enforcement. The state board of land commissioners is hereby authorized and directed to enter into contracts in the name of the state of Montana with open cut or strip mining operators which will provide for the reclamation of lands on which open cut or strip mining has been or is to be conducted. The state board of land commissioners is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and said board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

History: En. Sec. 3, Ch. 224, L. 1971.

50-1021. Definitions. Definitions when used in this act, unless a different meaning clearly appears from the context;

(1) "Contract" means mined land reclamation "model" contract, dated January, 1971, prepared by the select committee on mined land reclamation contracts of the council on natural resources and development on file with the commission. Provided, however, said contract may be revised or changed from time to time by the commission, after consultation with the advisory committee and representatives of the affected industry. Such revised or changed contract shall become the "model contract" as referred to in this section for all contracts entered into subsequent to the date of revision.

(2) "Reclamation" means the reconditioning of the area of land affected by open cut or strip mining operations.

(3) "Open cut or strip mining" means the mining of bentonite, clay, coal, sand, gravel, phosphate rock or uranium by removing the overburden lying upon natural deposits thereof, and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality or quantity of any natural deposit of minerals.

(4) "Overburden" means all of the earth and other materials which lie above a natural deposit of a mineral or minerals, and also means such earth and other material after removal from their natural state in the process of open cut or strip mining.

(5) "Operator" means any person engaged in and controlling an open cut or strip mining operation.

(6) "Mineral" means and includes bentonite, clay, coal, sand, gravel, phosphate rock and uranium.

(7) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(8) "Commission" means the state board of land commissioners.

(9) "Person" means any natural person, or any firm, association, partnership, co-operative, corporation, or any department, agency or instrumentality of the state or any governmental subdivision, or any other entity whatsoever.

(10) "Landowner" means the owner of land directly or indirectly affected by an open cut or strip mining operation.

(11) "Advisory committee" means a committee consisting of the administrative head, or his authorized representative, of the following agencies: (1) state soil conservation committee; (2) department of fish and game; (3) office of state forester; (4) Montana water resources board; (5) department of planning and economic development; (6) department of health; (7) state bureau of mines and geology.

(12) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. Such notice shall be given once a week for three (3) successive weeks.

History: En. Sec. 4, Ch. 224, L. 1971.

50-1022. Administration—employment of person experienced in mined land reclamation. The commission is the administrator of this act and it has all the power necessary to implement and enforce it. The commission shall employ, with the advice and consent of the advisory committee, a person experienced and qualified in the field of mined land reclamation and may delegate to such person such powers, duties and functions under this act as it deems necessary for the performance of its duties as administrators of this act. Such person shall be subject, however, to the supervision and control of the state land commissioner and the state board of land commissioners.

History: En. Sec. 5, Ch. 224, L. 1971.

50-1023. Powers, duties and functions of commission. The commission shall have and exercise the following powers, duties and functions:

(1) To prepare and adopt rules and regulations pertaining to open cut or strip mining to accomplish the purposes of this act.

(2) To conduct hearings and for the purposes of conducting such hearings, to administer oaths and affirmations, to subpoena witnesses, to compel attendance of witnesses, to hear evidence and to require the production of any books, papers, correspondence, memoranda, agreements, documents or other records relevant or material to the inquiry.

(3) To adopt uniform procedures for the filing of necessary records, the issuance of contracts, and for any other matters of administration not specifically enumerated in this act.

(4) To co-operate with and accept advisory services from the United States Geological Survey, the United States Bureau of Land Management, the United States Forest Service, the United States Bureau of Mines, the United States Bureau of Indian Affairs, or other appropriate federal agencies and from any state agency to include the commission and department of fish and game, Montana bureau of mines and geology, Montana water resources board, state highway commission, department of agriculture, department of health, department of planning and economic development, state soil conservation committee, state forester, grass conservation commission, oil and gas conservation commission, agricultural experiment station, all units of the Montana university system, and from any person or landowner who might be interested or affected by any open cut or strip mining, or reclamation.

(5) To reclaim any affected land with respect to which a bond has been forfeited.

(6) To make investigations or inspections which may be deemed necessary to insure compliance with any provisions of this act.

(7) To consult with and review the recommendations of the advisory committee with respect to reclamation plans submitted by open cut or strip mining operators.

History: En. Sec. 6, Ch. 224, L. 1971.

50-1024. Contract for reclamation required for mining — exception. From and after the effective date of this act, no operator shall conduct open cut or strip mining operations which shall result in the removal of ten thousand (10,000) cubic yards, or more, of product or overburden, until he has entered into a contract with the commission for the reclamation of the land affected.

Nothing in this act shall impair the obligation of model contracts entered into under existing statutes.

History: En. Sec. 7, Ch. 224, L. 1971.

50-1025. Application for contract—form and contents—bond and fee—amended contract—withdrawing land. Applications for a contract shall be made upon a form furnished by the commission, which form shall contain the following:

(1) The name of the operator and, if other than the owner of the land, the name and address of the owner.

(2) The mineral to be extracted and the type of operation to be conducted.

(3) The volume of earth to be removed, as accurately as the same may then be estimated, and the volume which has been previously removed, if any.

(4) The location of the operation by legal subdivision, section, township and range, and county.

(5) The date when such operation was or will be commenced.

(6) The operator must submit a plan of his operation and the method and manner of reclamation that will be used or followed. If the operator,

prior to applying for a contract, notifies the commission of his intention to submit a plan, and requests the commission to examine the area to be mined, the commission shall cause the area to be examined and make recommendations to the operator regarding reclamation.

(7) A statement that the applicant has the right and power by legal estate owned to mine by open cut or strip mining the lands so described.

(8) The application shall be accompanied by: (a) a bond or security meeting the requirements as set out in this act; and (b) a fee of fifty dollars (\$50). Upon receipt of such application, bond or security and fee due from the operator, and upon agreement to the terms of the contract by the parties, the commission shall issue a contract to the applicant which shall entitle him thereafter to continue in or engage in open cut or strip mining on land therein described.

(9) An operator desiring to have his contract amended to cover additional contiguous or nearby land may file an amended application with the commission. Upon receipt of the amended application, and such additional bond as may be required, and upon agreement to the terms of the amendment by the parties, the commission shall issue an amendment to the original contract covering the additional land described in the amended application, without the payment of any additional fee.

(10) An operator may withdraw any land covered by contract, except affected land, by notifying the commission thereof, in which case the penalty of the bond or security filed by such operator pursuant to the provisions of this act shall be reduced proportionately.

History: En. Sec. 8, Ch. 224, L. 1971.

50-1026. Terms of bond—security in lieu of bond—substitution of surety—forfeiture of bond—reduction of penalty. Any bond herein provided to be filed with the commission by the operator shall be in such form as the commission prescribes, payable to the state of Montana, and conditioned upon the operator's full compliance with all requirements of this act and all rules and regulations of the commission. Such bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety, licensed to do business in the state of Montana, as surety. The penalty of such bond shall be in an amount not to exceed the costs of restoration required by this act as determined by the commission, but shall not be less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) per acre.

In lieu of such bond, the operator may deposit cash and government securities or a bond with property sureties with the commission in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the commission, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety shall be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this act. Such bond or security shall be and remain in effect until the mined acreages have been reclaimed, as provided under the contract, and approved and released by the commission, and shall from time to time

cover only actual mined acreages and may be increased or reduced to cover only such acreages as remained unrestored.

If the license to do business in the state of any surety upon a bond filed with the commission pursuant to this act shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the commission shall have the right to suspend the contract of the operator to conduct operations upon the land described in such contract until such substitution has been made.

The commission shall cause to be reclaimed any affected land with respect to which a bond has been forfeited.

Whenever an operator shall have completed all of the requirements under the provisions of this act as to any affected land, he shall notify the commission thereof. If the commission shall release the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately.

History: En. Sec. 9, Ch. 224, L. 1971.

50-1027. Judicial remedies. Appeals from decisions of the commission may be taken to the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, in which district the commission shall maintain its office, or the district court of any judicial district in which the land affected is situated, in whole or in part. Appeals from commission decisions may be taken immediately to said court without first requesting rehearing, reconsideration, or review of the commission, but, in order to perfect such an appeal, it shall be taken within thirty (30) days of the date of the decision of the commission. The appeal shall be perfected by the filing of a notice of appeal with the commission and a copy of said notice with the clerk of the said district court.

Any party may move the court to remand the case to the commission to adduce additional specified material evidence if the party can show grounds for failure to adduce the evidence before the commission. The review by the district court shall be based solely upon the record of the hearing before the commission. If the court finds the decision of the commission is not supported by relevant, material, reliable, probative, or substantial evidence, it shall modify the decision of the commission or reverse.

Either party may perfect an appeal from the district court to the supreme court as in all civil cases.

History: En. Sec. 10, Ch. 224, L. 1971.

50-1028. Receipt and use of funds. The commission may receive any federal funds, state funds, or any other funds for the reclamation of land affected by open cut or strip mining. The commission may cause the reclamation work to be done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

Any funds or any public works programs available to the commission shall be used and expended to reclaim and rehabilitate any lands that have been subjected to open cut or strip mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

History: En. Sec. 11, Ch. 224, L. 1971.

50-1029. Disposition of fees and forfeitures. All fees and forfeitures collected under the provisions of this act shall be deposited with the state treasurer in a reclamation account in the earmarked revenue fund, and all moneys appropriated therefrom shall be used to accomplish the purposes of this act.

History: En. Sec. 12, Ch. 224, L. 1971.

50-1030. Inspection by commission. The commission, or its accredited representatives, may enter upon the lands of the operator at all reasonable times for the purpose of inspection, to determine whether the provisions of this act have been complied with.

History: En. Sec. 13, Ch. 224, L. 1971.

50-1031. Mining without contract a misdemeanor—penalty. Anyone required by this act to have a contract and who engages in open cut or strip mining without previously securing a contract to do so as prescribed by this act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000). Each day of operation without a contract required by this act shall be deemed a separate violation.

History: En. Sec. 14, Ch. 224, L. 1971.

50-1032. Credit on taxes—inspection of mines—reports to board of equalization. Any open cut or strip coal mine operator who shall enter into a contract with the commission providing for the reclamation of lands on which the strip mining of coal has been conducted shall annually receive credit toward the payment of the coal mines license tax provided in chapter 13 of Title 84, R. C. M., 1947, in an amount equal to one-half ($\frac{1}{2}$) of the actual expenditure for the on-site reclamation work performed on such lands under such contracts during the preceding year, said credit shall not exceed one cent (1¢) per taxable ton of coal mined by said operator.

The commission shall at least annually inspect each strip mining operation for coal in this state, and shall, if the operator of such mine has entered into a contract for the reclamation of strip mined lands, annually determine the actual expenditures for all reclamation work performed by such mine operator during the preceding year. The commission shall promptly, after each annual determination of such expenditure, report to the state board of equalization, the state treasurer, and the operator actual expenditures for reclamation work performed on strip mined lands during the immediately preceding year by each strip mine operator, and one-half ($\frac{1}{2}$) of the amount, not to exceed one cent (1¢) per taxable ton of coal mined by said operator and the amount so reported shall be

deducted from coal mines license tax due from such operator pursuant to the provisions of chapter 13 of Title 84, R. C. M., 1947, subject to the limitations herein set forth.

History: En. Sec. 15, Ch. 224, L. 1971.

50-1033. Reclamation of land after forfeiture of bond. The commission shall have the power to reclaim, in keeping with the provisions of this act, any affected lands with respect to which a bond has been forfeited and to use moneys appropriated from reclamation account in the earmarked revenue fund for such purposes.

History: En. Sec. 16, Ch. 224, L. 1971.

Separability Clause

Section 17 of Ch. 224, Laws 1971 read "Severability. The provisions of this act are severable, and if any part or provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts of provisions of this act that are severable from the invalid applications."

Repealing Clause

Section 18 of Ch. 224, Laws 1971 read "Sections 50-1001 through 50-1017, R. C.

M., 1947, are repealed. However, contracts entered into under the provisions of sections 50-1001 through 50-1017, R. C. M., 1947, are not affected hereby, and shall remain in effect until terminated or completed."

Effective Date

Section 19 of Ch. 224, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

CHAPTER 11—DREDGE MINING—PRESERVATION OF LANDS

- Section 50-1101. Public policy.
 50-1102. Dredge mining defined.
 50-1103. Certain mining operations excluded.
 50-1104. State board of health to administer act—powers and duties—rules and regulations—court may require board to perform duty.
 50-1105. Act applicable to mining on any property within state—Permit required to conduct dredge-mining operation.
 50-1106. Application for permit to conduct dredge-mining operation—requirements of application—notice of application by publication—written protest to application—requirements for approval of application.
 50-1107. Surety bond or cash deposit—permit limited to described land—permit not transferable.
 50-1108. Land required to be returned to natural state.
 50-1109. Settling ponds required.
 50-1110. Inspection by board.
 50-1111. Violation of act—termination of permit.
 50-1112. Discharge of surety bond—forfeiture of bond.
 50-1113. Misdemeanor—restoration period—protest by any party—penal provisions additional and cumulative.
 50-1114. Appeal.

50-1101. Public policy. It is hereby declared to be the policy of the state of Montana to protect its lands, streams and watercourses from destruction by dredge mining and preserve the same for the enjoyment, use and benefit of all of the people, and that clear and unpolluted water in the streams, rivers and lakes of Montana suitable for recreational, domestic, industrial, commercial and agricultural purposes is in the public interest.

History: En. Sec. 1, Ch. 123, L. 1969.

Title of Act

The Dredge Mining Regulation and Land Preservation Act.

50-1102. Dredge mining defined. For the purposes of this act dredge mining shall mean mechanical operations that result in the recovery of minerals in or near a stream or riverbed, with the use of a dredge boat or sluice-washing plant, whether fed by bucket line as part of such dredge or by separate dragline, hydraulic pressure, vacuum, suction or any other supply capable of moving ten (10) cubic yards of earth or rock material per day.

History: En. Sec. 2, Ch. 123, L. 1969.

Constitutionality

Extension of this act to sluice-washing plants violated sec. 23, Art. V of the Con-

stitution since title of act referred only to dredge mining, which is a distinct operation different from sluice-washing. *Sigety v. State Board of Health*, — M —, 482 P 2d 574.

50-1103. Certain mining operations excluded. This act shall not be construed to include any mechanical operation primarily intended for open pit mining, strip coal mining, irrigation, extraction of gravel for construction and/or road-building purposes, or agricultural purposes.

History: En. Sec. 3, Ch. 123, L. 1969.

Unconstitutional

Exemption of certain types of mining by this section denied equal protection of the law to dredge mining operators since

there is no valid reason for differentiating between dredge mining and other types of mining, so the entire act is rendered invalid. *Sigety v. State Board of Health*, — M —, 482 P 2d 574.

50-1104. State board of health to administer act—powers and duties—rules and regulations—court may require board to perform duty.

(a) The state board of health is hereby designated the administrative agency of this act and shall have the power and duty to adopt rules and regulations for its administration in accordance with the intent and purposes thereof, and to employ personnel necessary to act upon its behalf and to carry out this law effectively.

(b) It shall be the duty of the board to enforce all of the provisions of this act. If the board fails to enforce such provisions, any citizen of this state may commence an action in the appropriate court requiring the board to perform its duty.

(c) The board may establish such rules and regulations as it deems necessary to define the terms and carry out the purposes of this act.

History: En. Sec. 4, Ch. 123, L. 1969.

Cross-References

Board functions transferred to department of natural resources and conservation, sec. 82A-1503(1).

50-1105. Act applicable to mining on any property within state—permit required to conduct dredge-mining operation. The requirements of this act shall be applicable to dredge-mining operations upon all property located within this state whether publicly or privately owned. It shall be unlawful for any person to conduct dredge-mining operations within this state without first obtaining a permit as herein provided.

History: En. Sec. 5, Ch. 123, L. 1969.

50-1106. Application for permit to conduct dredge-mining operation — requirements of application — notice of application by publication — written protest to application — requirements for approval of application.

(a) Before any person may conduct a dredge-mining operation within this state he shall file with the board an application for a permit upon a form provided by the board and shall pay an application fee of one hundred dollars (\$100) for each ten (10) acres or fraction thereof involved in such application. Such application shall include an accurate description of the land proposed to be dredged by legal subdivisions and shall specify the number of acres involved, and shall include a plan specifying how the operator intends to satisfy sections 8 and 9 [50-1108 and 50-1109] of this act.

(b) If any applicant for such dredge-mining operations is not the owner of the lands described in the application or any part thereof, the owner of such lands shall endorse approval upon the application. No permit shall be issued in the absence of such approval by the owner of lands described in the application.

(c) Within ten (10) days after filing of an application for a permit, the director on behalf of the board shall issue a notice specifying the date of filing, the lands and waters affected, the name and address of the applicant and stating that anyone desiring to protest the issuance of the permit may file a written protest within forty (40) days after the date of first publication of such notice. The director shall cause the notice to be published within ten (10) days after the date of filing, in a newspaper published within the county where the dredging operation is proposed, or in the event no newspaper is printed in that county, then in a newspaper of general circulation therein. This notice shall be published once a week for three (3) consecutive weeks.

(d) Any person, association, corporation or agency of the state or the federal government may, within the time allowed, file with the board a written protest against the granting of such application. The protest shall be signed by the protestant with his address and shall clearly set forth his objections to the approval of the application.

(e) The board or its agents may conduct such investigations as it deems desirable for the purpose of determining whether the permit should be approved. In determining whether an application for permit shall be approved or disapproved, the board shall consider its rules and regulations, the provisions of this chapter and other applicable laws. No application shall be approved unless the board specifically finds that:

(1) granting of the application will not be detrimental to the present and future economy of the area or the state, and

(2) granting of the application will not have an adverse effect upon the natural habitat and environment of fish and game or other wildlife of the area or the state, and

(3) granting of the application will not be detrimental to or cause undue damage to the natural resources of the area or the state, and

(4) granting of the application will not have an adverse effect upon present and future tourist and recreational value of the area or the state, and

(5) granting of the application will not have an adverse effect upon the future assessed value of the area or the state, and

(6) granting of the application is in the public interest.

(f) Upon making an initial determination to approve or disapprove the application for permit, the board shall notify the applicant and all protestants by mailing notice of its intended action to the addresses appearing on the application and the protests. If the applicant or any protestant desires to request further hearings written requests for such must be made to the board within thirty (30) days of the mailing of such notice. If no request is made, the proposed findings shall become final and nonreviewable. If such further hearing be so requested, it shall then be deemed a contested case, and a hearing conducted.

(g) No permit shall be finally granted except upon written approval by a two-thirds ($\frac{2}{3}$) majority of the membership of the state board of health.

History: En. Sec. 6, Ch. 123, L. 1969.

50-1107. Surety bond or cash deposit—permit limited to described land—permit not transferable. (a) No permit shall be issued to any person to conduct dredge-mining operations, until such person shall file with the board an initial surety bond in the sum of ten thousand dollars (\$10,000) for a specified and particularly described ten (10) acre tract of the area covered by the permit or for all of the land covered by the permit if the permit covers an area less than ten (10) acres, with sureties acceptable to the board conditioned for the faithful performance by the applicant for all of the requirements of this act, relative to land and watercourse restoration. Prior to conducting dredge-mining operations on any of the permit area not covered by the initial bond, the person to whom the permit has been issued shall file with the board a similar bond in the sum of ten thousand dollars (\$10,000) for each specified and particularly described ten (10) acre tract of the permit area or for the remaining area covered by the permit where less than ten (10) acres remain in the permit area. In lieu of such surety bond cash may be deposited with the board in the sum computed in the same manner as hereinabove set forth, to be retained as security for the faithful performance by the applicant of the requirements of this act.

(b) The permit shall describe the land and acres involved and may in the discretion of the board be limited to a lesser area than sought in the application.

(c) Permits issued hereunder are not transferable, and persons to whom such permits are issued shall not transfer nor attempt to transfer them to another.

History: En. Sec. 7, Ch. 123, L. 1969.

50-1108. Land required to be returned to natural state. Where any person conducts a dredge-mining operation within the state, it is hereby required that the ground disturbed thereby shall be by such operator smoothed over reasonably comparable with the natural contour of the ground prior to such disturbance. Any watercourse disturbed by such dredging shall be by such operator replaced on meander lines with pool and stream structure conducive to good fish and wildlife habitat and recreational use. The disturbed area shall be replanted as far as reasonably possible to the condition existing prior to dredging.

History: En. Sec. 8, Ch. 123, L. 1969.

50-1109. Settling ponds required. Where any person conducts a dredge-mining operation where water used in such mining process flows into a stream or river within the state, it is hereby required that such operator shall construct settling ponds of sufficient capacity and character to clarify the water used in the mining process before such water is discharged into the stream. Such settling ponds shall be constructed in such a manner as to prevent sedimentary overflow or other pollution during high water.

History: En. Sec. 9, Ch. 123, L. 1969.

50-1110. Inspection by board. It shall be the duty of the board in its administration of this act to cause periodic inspections to be made of the operation under such permits to determine compliance with this law and to make rules and regulations with respect thereto.

History: En. Sec. 10, Ch. 123, L. 1969.

50-1111. Violation of act—termination of permit. If the board determines that anyone holding a permit to conduct dredging operations has violated any of the terms of this act, the board is empowered to petition the district court of the state of Montana for authority to terminate the permit.

History: En. Sec. 11, Ch. 123, L. 1969.

50-1112. Discharge of surety bond—forfeiture of bond. (a) The surety bond required by this act to be given by a permit holder shall be exonerated and discharged upon the completion of such dredge-mining operation and upon certification by the board that the permit holder has fully complied with the requirements of this act and the rules and regulations of the board.

(b) In the event a permit holder fails to comply with the requirements of this act and the rules and regulations of the board then the applicable bond of such permit holder shall be forfeited to the state of Montana in such amount and to such extent as the board shall estimate and determine will be necessary to pay all cost and expenses of restoring the lands and beds of streams damaged by dredge mining of the defaulting permit holder. Such forfeited funds are to be administered through a special fund by the board to restore the lands and beds

of streams damaged by dredge mining of such defaulting permittee. All funds from all bonds forfeited are hereby perpetually appropriated to a special fund to be administered by the board for the restoration of such lands and watercourses damaged in dredge-mining operations.

(c) No forfeiture of bond of a permit holder shall be made until after hearing duly noticed to the permit holder and the surety upon the bond and held as provided in section 11 [50-1111] hereof.

History: En. Sec. 12, Ch. 123, L. 1969.

50-1113. Misdemeanor—restoration period—protest by any party—penal provisions additional and cumulative. (a) Any dredge-mining operator or permit holder who fails to comply with any of the requirements of this act or of the rules and regulations and orders of the board made hereunder is guilty of a misdemeanor.

(b) Any dredge-mining operator or permit holder who fails to meet the land and watercourse restoration requirements of this act within one hundred eighty (180) days after the disturbance of the ground by dredging has occurred or such longer period of time not to exceed one (1) year as may be granted by the board, is guilty of a misdemeanor. Each subsequent day of failure to comply after the expiration of one hundred eighty (180) days or additional time period as extended by the board constitutes a separate offense.

(c) In addition to the penal provisions any person, association, corporation or agency of the state or federal government may apply to the board protesting any violation of this act and the board shall thereupon make an appropriate investigation.

(d) The penal and administrative provisions of this act are additional and cumulative to all rights of action at law or equity that may exist in any person, association, corporation or agency of the state or federal government to enjoin wrongful dredge-mining operations or recover damages resulting therefrom.

History: En. Sec. 13, Ch. 123, L. 1969.

50-1114. Appeal. Any person who is aggrieved by any final decision of the board under this act shall be entitled to judicial review by the district court and appeal to the supreme court.

History: En. Sec. 14, Ch. 123, L. 1969.

Separability Clause

Section 15 of Ch. 123, Laws 1969 read
"If any word, sentence, clause, section or

part of this act should be declared unconstitutional, it shall not affect the balance of the act, it being the intention of the people to have passed the remaining portion of the act."

CHAPTER 12—RECLAMATION OF MINING LANDS

- Section 50-1201. Legislative observations and finding.
50-1202. Purposes of act.
50-1203. Definitions.
50-1204. Administration—rules and regulations—employment of supervisors.
50-1205. Investigations, research and experiments in reclamation.

- 50-1206. Co-operation with other agencies—receipt and expenditure of funds.
- 50-1207. Exploration license and development permit—duration and renewal—requirements.
- 50-1208. Operating permit—fee—contents of application.
- 50-1209. Reclamation plan—accomplishment of specific activities.
- 50-1210. Inspection of mining site—issuance of operating permit—modification of reclamation plan—succession to interest in uncompleted mining operation.
- 50-1211. Performance bond.
- 50-1212. Annual report of activities by permittee—annual fee.
- 50-1213. Inspection to determine compliance with reclamation plan—rectification of deficiencies—board actions to reclaim disturbed lands.
- 50-1214. Reasons for denial of permit.
- 50-1215. Resubmission with new reclamation plan.
- 50-1216. Appeals board—administrative remedies.
- 50-1217. Judicial review.
- 50-1218. Appeal to supreme court.
- 50-1219. Exemption of works performed prior to promulgation of rules and regulations.
- 50-1220. Exemption of small miners—written agreement—noncompliance a misdemeanor.
- 50-1221. Information obtained from applications confidential—admissible in hearings or proceedings.
- 50-1222. Violation a misdemeanor—penalties.
- 50-1223. Exemption of operations on federal lands.
- 50-1224. Exemption of sample collectors.

50-1201. Legislative observations and finding. The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals takes place in diverse areas where geological, topographical, climatic, biological and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this act will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

History: En. Sec. 1, Ch. 252, L. 1971.

Title of Act

An act requiring the licensing of persons engaged in mining exploration and related activities; requiring permits for the conduct of development, mining and

related activities; providing for the reclamation of explored, developed, and mined land; providing for the administration and enforcement of said act by the board of state lands and investments; and providing for an appeal procedure; and providing an effective date.

50-1202. Purposes of act. The purposes of this act are to provide: (i) that the usefulness, productivity and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use; (ii)

authority for co-operation between private and governmental entities in carrying this act into effect; (iii) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and (iv) priorities and values to the aesthetics of our landscape, waters and ground cover. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition and safety condition appropriate to any proposed subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971.

50-1203. Definitions. As used in this act, unless the context indicates otherwise: (1) "Surface mining" shall mean and include all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including, but not limited to, open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and any and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining shall not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium nor excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(2) "Unit of surface mined area" shall mean and include that area of land and surface water included within an operating permit actually disturbed by surface mining during each twelve-month period of time, beginning at the date of the issuance of the permit, and shall comprise and include the area from which overburden and/or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which, by virtue of such use, are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(3) "Disturbed land" shall mean and include that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and shall comprise that area from which the overburden, and/or minerals have been removed; tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from said operation and which has not been previously reclaimed under the reclamation plan.

(4) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(5) "Underground mining" shall mean and include all methods of mining other than surface mining.

(6) "Person" shall mean and include any person, corporation, firm, association, partnership or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

(7) "Mineral" shall mean and include any ore, rock or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock or

uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future usage, refinement or smelting.

(8) "Exploration" shall mean and include all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in section 20 [50-1220] and section 24 [50-1224] herein.

(9) "Development" shall mean and include all operations between exploration and mining.

(10) "Mining" shall be deemed to have commenced at such time as the operator shall first mine ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or shall first take bulk samples for metallurgical testing in excess of aggregate of ten thousand (10,000) short tons.

(11) "Reclamation plan" shall mean and include the operator's written proposal, as required and approved by the board for reclamation of the land that will be disturbed, which proposal shall include to the extent practical at the time of application for a developing or operating permit: (a) a statement of the proposed subsequent use of the land after reclamation;

(b) Plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;

(c) Manner and type of revegetation or other surface treatment of disturbed areas;

(d) Procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) Method of disposal of mining debris;

(f) Method of diverting surface waters around the disturbed areas where necessary to prevent pollution of such waters or unnecessary erosion;

(g) Method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) Such maps and other supporting documents as may be reasonably required by the director;

(i) A time schedule for reclamation that meets the requirements of section 9 [50-1209] of this act.

(12) "Vegetative cover" as used in this act shall mean the type of vegetation, grass, shrubs, trees, or any other form of natural cover deemed suitable at time of reclamation.

(13) "Board" shall mean the Board of State Lands and Investments, or such state employee or state agency as may succeed to its powers and duties under this act.

(14) "Director" or "administrator" shall mean the director of the Board of State Lands and Investments.

(15) "Small miner" shall mean any person, firm or corporation engaged in the business of mining who does not remove from the earth during any twenty-four (24) hour period material in excess of one hundred (100) tons in the aggregate.

History: En. Sec. 3, Ch. 252, L. 1971.

50-1204. Administration—rules and regulations—employment of supervisors. The board is charged with the responsibility of administering this act. In order to implement its terms and provisions, the board shall from time to time promulgate such rules and regulations as the board shall deem necessary. The board may delegate such powers, duties and functions to its director and staff members as it deems necessary for the performance of its duties as administrator of this act. The board shall employ experienced, qualified persons in the field of mined land reclamation, who for the purpose of this act, are hereinafter referred to as supervisors.

History: En. Sec. 4, Ch. 252, L. 1971.

50-1205. Investigations, research and experiments in reclamation. The board shall have the authority to conduct or authorize investigations, research, experiments and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

History: En. Sec. 5, Ch. 252, L. 1971.

50-1206. Co-operation with other agencies—receipt and expenditure of funds. The board shall co-operate with other governmental and private agencies in this state and other states and agencies of the federal government, and may reasonably compensate them for any services the board requests that they provide. The board may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in section 9 [50-1209] of this act.

History: En. Sec. 6, Ch. 252, L. 1971.

50-1207. Exploration license and development permit—duration and renewal—requirements. (1) Effective sixty (60) days after the date on which the board shall first promulgate its regulations as authorized by section 4 [50-1204] of this act, no person shall engage in exploration or development in the state without first obtaining an exploration license or development permit from the board to do so, such license or permit to be issued for a period of one (1) year from date of issue and to be renewable from year to year on application therefor filed at any time within the thirty (30) days next preceding the expiration of the current license or permit and payment of like fee as required for a new license or permit; provided that the applicant for renewal is not then held by the board to be in violation of any provision of this law.

(2) An exploration license shall be issued to any applicant therefor who shall: (i) pay a fee of five dollars (\$5) to the board; (ii) agree to reclaim any surface area damaged by the applicant during exploration operations, all as may be reasonably required by the board, unless the applicant shall have applied for and been issued a development or operating permit for the lands so damaged; and (iii) not be in default of any other reclamation obligation under this law.

(a) Except as hereafter provided, the holder of such license shall not be compelled to disclose the area of his exploration operations, except where charged with a delinquency in performing reclamation obligations hereunder.

(b) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of said certificates to the board.

(3) A development permit shall be issued to any applicant therefor that shall meet the following requirements: (a) Payment of twenty-five dollars (\$25) fee to the board;

(b) Submit a description of the area within which development is to be conducted;

(c) Submit a suitable map or aerial photograph showing topographic, cultural and drainage features;

(d) Submit a statement of proposed development methods, i.e., drilling, trenching, etc., and the location of primary support roads and facilities;

(e) Submit an estimate of the acreage expected to be disturbed in the twelve (12) months following issue of the permit, together with a map of the general area of the development operations for a like period. If the board shall, on good cause, consider the operator's estimate of the quantity of surface to be disturbed to be more than twenty per cent (20%) below what the board considers correct in the circumstances, it may by order require the operator to increase the amount of his bond accordingly.

(f) Submit a proposed reclamation plan for lands to be disturbed in the next twelve (12) months.

(g) Submission of an affidavit as may be required by the board showing that any lands disturbed by exploration, development, or mining in the state of Montana by applicant within two years prior to the application for said permit is or is in course of being reclaimed in accordance with the provisions of this act; or submission of an affidavit and such supporting documents and evidence as may be required by the board showing that any lands disturbed by exploration, development, or mining by applicant in the state of Montana during the two (2) years prior to the application for said permit will be restored in accordance with the provisions of this act.

(4) Following approval of a development plan, the operator shall be required to file a performance bond in accordance with provisions of this act.

(5) Employees of persons holding a valid license or permit under this act shall be deemed included in and covered by such license or permit.

(6) Upon proper application by the holder of an exploration license or development permit, the board may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for development license or operating permit for the land in which such openings or excavations have been made.

History: En. Sec. 7, Ch. 252, L. 1971.

50-1208. Operating permit—fee—contents of application. (1) Effective sixty (60) days after the date on which the board shall first promulgate its regulations as authorized by section 4 [50-1204] of this act, no person shall engage in mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Any person, prior to receiving an operating permit from the board, must pay the basic permit fee of twenty-five dollars (\$25) and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent required data by the rules and regulations:

(a) Name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners and the like and its resident agent for service of process, if required by law;

(b) Minerals expected to be mined;

(c) A proposed reclamation plan;

(d) Expected starting date of mining;

(e) A map showing the specific area to be mined and the boundaries of the land which will be disturbed; topographic detail; the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area; location of proposed access roads to be built and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) Types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) A plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances.

History: En. Sec. 8, Ch. 252, L. 1971.

50-1209. Reclamation plan—accomplishment of specific activities. (a) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, shall, to the extent feasible, be conducted simultaneously with mining and in any case shall be initiated promptly after completion or abandonment of mining on those portions of the mine complex that will not be subject to further disturbance by the mining operation. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be

completed not more than two (2) years after completion or abandonment of mining on said portion of mine complex.

(b) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without having previously obtained from the supervisor or director written approval of his proposed change.

(c) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(d) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(e) Where mining has left an open pit exceeding two (2) acres of surface area, and composition of the floor and/or walls of which pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan must include provisions which adequately provide for:

(1) Insulation of all faces from moisture of water contact by covering to a depth of two (2) feet or more with material or fill not susceptible to generation of such objectionable effluents; or

(2) Processing of any such objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level deemed safe to humans and the environment by the board; or

(3) Drainage of any such objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels deemed safe by the board before release from the settling basin; or

(4) Absorption and/or evaporation of objectionable effluents in the open pit itself; and

(5) Prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(f) Vegetative cover will be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan.

(g) To the extent practical, the reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation need not reclaim the areas to a better condition or different use than that which existed prior to development or mining.

(h) A reclamation plan will be approved by the board if it adequately provides for the accomplishment of the activities heretofore specified.

History: En. Sec. 9, Ch. 252, L. 1971.

50-1210. Inspection of mining site—issuance of operating permit—modification of reclamation plan—succession to interest in uncompleted mining operation. Upon receipt of an application for an operating permit the mining site shall be inspected by a supervisor. Within thirty-five

(35) days of receipt of the application and reclamation plan by the board and receipt of the permit fee, the board shall either issue an operating permit to the applicant or return any incomplete or inadequate application to the applicant along with a description of the deficiencies. Failure of the board to so act within that period shall constitute approval of the application and the permit shall be issued promptly thereafter.

The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface or underground mining authorized by the permit is completed or abandoned, unless the permit is suspended by the board as provided in this act. The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) To modify the requirements so they will not conflict with existing laws;

(b) The previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) The operator and the supervisor mutually agreed, in the field, to temporarily modify the reclamation plan, pending final approval by the board.

When one (1) operator succeeds to the interest of another in any uncompleted mining operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this act as to such operation; provided, that both operators have complied with the requirements of this act and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this act.

History: En. Sec. 10, Ch. 252, L. 1971.

50-1211. Performance bond. Concurrently with issue of a permit, the board may provide the permittee with a list of corporate sureties acceptable to the board from whom the performance bond hereafter required can be obtained.

Upon receipt of a permit the permittee, other than a public or governmental agency, shall not commence operation until the permittee has deposited with the board an acceptable performance bond on forms prescribed and furnished by the board. This performance bond shall be a corporate surety bond executed in favor of the board by a corporation authorized to do a surety business in the state of Montana and approved by the board. The bond shall be filed and maintained in an amount equal to the estimated cost of completing the reclamation plan for the area to be developed or mined during the next twelve (12) month period and any previously developed or mined area for which a permit has been issued and on which the reclamation has not been satisfactorily completed and approved. The board shall have the authority to determine the amount

of the bond that shall be required, and may refuse any bond not deemed adequate. In no case shall the amount of the bond be more than five hundred dollars (\$500) per acre of the area above described or fraction thereof.

The bond shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations adopted pursuant thereto.

In lieu of the surety bond required by this section, the permittee may file with the board a cash deposit, negotiable securities acceptable to the board, or an assignment of a savings account in a Montana bank on an assignment form prescribed by the board.

Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released prior thereto as hereinafter provided. Liability under the bond may be released only upon written notification from the board. Notification shall be given upon completion of compliance or acceptance by the board of a substitute bond. In no event shall the liability of the permittee or surety exceed the amount of the surety bond required by this section.

A public or governmental agency shall not be required to post a bond under the terms of this chapter.

A blanket performance bond covering two (2) or more operations may be accepted by the board in lieu of separate bonds for each separate operation.

If adequate proof exists that a bond is unobtainable for any reason other than lack of fiscal responsibility on the operator's part from any source, the licensee's obligation to supply such bond shall be suspended until such time as a source for bonding is obtained.

Notwithstanding the foregoing, an applicant for a permit who shall, as part of his application, submit his duly acknowledged certificate that he will not, in the course of his entire operations in the state of Montana, exceed five (5) acres in aggregate of disturbed land unreclaimed, shall not be required to show financial capability to procure a performance bond as required by this section or thereafter to procure a corporate surety bond or make any in lieu deposit with the board therefor. Relief from such surety requirements shall in no wise relieve the permittee from any direct reclamation obligations hereunder. On acceptable showing of hardship on the part of an applicant, the board may relieve any permittee within the classification first described in this paragraph from such technical showings under sections 3 [50-1203] (11) and 8 [50-1208] which the board considers may be waived without injury to the interest of the public.

History: En. Sec. 11, Ch. 252, L. 1971.

50-1212. Annual report of activities by permittee—annual fee. Within thirty (30) days after completion or abandonment of operations on an area under permit or within thirty (30) days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules and regulations of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the

annual fee of twenty-five dollars (\$25) and shall file a report of activities completed during the preceding year on a form prescribed by the board, which report shall:

- (a) Identify the permittee and the permit number;
- (b) Locate the operation by subdivision, section, township and range, and with relation to the nearest town or other well-known geographic feature;
- (c) Estimate acreage to be newly disturbed by operation in the next twelve (12) month period; and
- (d) Update any maps previously submitted or specifically requested by the board. Such maps shall show:
 - (1) The permit area;
 - (2) The unit of disturbed land;
 - (3) The area to be disturbed during the next twelve (12) month period;
 - (4) If completed, the date of completion of operations;
 - (5) If not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and
 - (6) The date of beginning, amount and current status of reclamation performed during the previous twelve (12) months.

History: En. Sec. 12, Ch. 252, L. 1971.

50-1213. Inspection to determine compliance with reclamation plan—rectification of deficiencies—board actions to reclaim disturbed lands. Following receipt of the permittee's report, and at any other reasonable time the board may elect, the board shall cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the board's rules and regulations.

The permittee shall proceed with reclamation as scheduled in his approved reclamation plan. Following written notice by the board noting deficiencies, the permittee shall commence action within thirty (30) days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected; provided, that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The board may extend performance periods referred to in this section and in section 9 [50-1209] of this act, for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the board, making every reasonable effort to comply.

Within thirty (30) days after notification by the permittee and when in the judgment of the board reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and his bond on said area shall be released or decreased proportionately to the acreage included within the bond coverage.

If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within thirty (30) days after notification by the board, or

if reclamation is not properly completed in conformance with the reclamation plan within two (2) years after completion or abandonment of operation on any fraction of the permit area, or such longer period as may have been authorized hereunder, or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the board within the time required therefor, the board may, with the staff, equipment and material under its control, or by contract with others, take such actions as are necessary for required reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

The board shall notify the permittee and his surety by order. The order shall state the amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within thirty (30) days after receipt of the notice, the attorney general, upon request of the board, shall bring an action on behalf of the state in district court. The surety shall be liable to the state to the extent of the bond.

In addition to the other liabilities imposed by this act, failure to commence action to remedy specific deficiencies in reclamation within thirty (30) days after notification by the board or failure to satisfactorily complete reclamation work on any segment of the permit area within two (2) years, or such longer period as the board may permit on permittee's application therefor, or on the board's own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be affected while an appeal is pending from any ruling requiring the same.

History: En. Sec. 13, Ch. 252, L. 1971.

50-1214. Reasons for denial of permit. A permit may be denied for any of the following reasons:

(a) The plan of development, mining, or reclamation conflicts with the state water and air purification standards;

(b) The reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this act.

A denial of a permit shall be in writing and state the reasons therefor.

History: En. Sec. 14, Ch. 252, L. 1971.

50-1215. Resubmission with new reclamation plan. A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the board a new plan for reclamation.

History: En. Sec. 15, Ch. 252, L. 1971.

50-1216. Appeals board—administrative remedies. A licensee, permittee or applicant who has been aggrieved by any decision of the board shall have the right of appeal to an appeals board comprised of the following: one (1) member of the fish and game department; two (2) qualified mining engineers to be appointed by the governor, at least one (1) of whom shall not be an employee of the state or any agency or arm thereof; one (1) member from the state department of agriculture; one (1) member of the department of health; and one (1) member from the state department of planning and economic development; and one (1) member from the legal staff of the attorney general.

The appeal shall be instituted by filing a petition with the appeals board within thirty (30) days after the denial of the permit. The petition shall contain a statement of the reasons for which the petitioner is aggrieved, and after reasonable notice the petitioner or his attorney or agent shall be afforded a hearing before the appeals board thereon.

Within fifteen (15) days after the hearing, the appeals board shall notify the petitioner in writing of its decision and the reasons therefor.

History: En. Sec. 16, Ch. 252, L. 1971.

50-1217. Judicial review. A licensee, permittee or applicant aggrieved by a final decision of the appeals board is entitled to judicial review under this act. Proceedings for review shall be instituted by filing a petition in a district court within thirty (30) days after service of the final decision of the appeals board. Copies of the petition shall be promptly served upon the appeals board and all parties of record.

The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved and the ground or grounds upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled.

Within thirty (30) days after the service of the petition, or within further time allowed by the court, the appeals board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

If, before the date set for hearing, application is made to the court by the appellant for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the appeals board, the court may order that the additional evidence be taken before the court.

The review shall be conducted by the court without a jury, and shall be confined to the administrative and court record. In cases of alleged irregularities in procedure before the appeals board, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

The court shall not substitute its judgment for that of the appeals board as to the weight of evidence on questions of fact. The court may affirm the decision of the appeals board or remand the case for further proceedings. The court may reverse or modify the decisions if substantial rights of the appellant have been prejudiced because the findings, inferences, conclusions, decisions or proceedings were: (a) in violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the director, board, or the appeals board;

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

(e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, including the additional evidence introduced before the court as above provided;

(f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(g) Because findings of fact, upon issues essential to the decisions, were not made although requested.

History: En. Sec. 17, Ch. 252, L. 1971.

50-1218. Appeal to supreme court. An aggrieved party may obtain review of a final judgment of a district court under this act by appeal to the supreme court within sixty (60) days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases.

History: En. Sec. 18, Ch. 252, L. 1971.

50-1219. Exemption of works performed prior to promulgation of rules and regulations. No provision of this act shall be applicable to any exploration or mining work performed prior to the date of promulgation of the director's rules and regulations pursuant to section 4 [50-1204] of this act.

History: En. Sec. 19, Ch. 252, L. 1971.

50-1220. Exemption of small miners—written agreement—noncompliance a misdemeanor. No provisions of this act shall apply to any small miner when the small miner agrees in writing, (1) That he shall not pollute or contaminate any stream; and

(2) That he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(3) He shall not conduct a mining operation which will result in more than five (5) acres of the earth's surface being disturbed and unreclaimed.

Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners, and/or operators of said project to a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), payable to the board of equali-

zation of the state of Montana, or any board, commission, or person authorized to collect said fine.

History: En. Sec. 20, Ch. 252, L. 1971.

50-1221. Information obtained from applications confidential—admissible in hearings or proceedings. Any and all information obtained by the board or by the director or his staff by virtue of applications for licenses or permits is confidential between the board and the applicant. Any information obtained by the board or by the director or his staff by virtue of applications for licenses or permits is, however, properly admissible in any hearing conducted by the director, the board, appeals board or in any judicial proceeding to which the director and the applicant are parties. Failure to comply with the secrecy provisions of this act shall be punishable by a fine of up to ten thousand dollars (\$10,000) or one (1) year in jail.

History: En. Sec. 21, Ch. 252, L. 1971.

50-1222. Violation a misdemeanor—penalties. Persons violating the provisions of this act shall be guilty of a misdemeanor and may be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than six (6) months or by both such penalties.

History: En. Sec. 22, Ch. 252, L. 1971.

50-1223. Exemption of operations on federal lands. This act shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law, or regulations issued by the federal agency administering such land, impose controls for reclamation of said lands substantially equal to or greater than those imposed by this act.

History: En. Sec. 23, Ch. 252, L. 1971.

50-1224. Exemption of sample collectors. This act shall not be applicable to any person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding one hundred dollars (\$100) per year.

History: En. Sec. 24, Ch. 252, L. 1971.

Separability Clause

Section 25 of Ch. 252, Laws 1971 read "The provisions of this act are severable, and if any part or provision thereof shall be held void in decision of the court so holding shall not affect or impair any of the remaining parts of the provisions of

this act that are severable from the invalid applications."

Effective Date

Section 26 of Ch. 252, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

CHAPTER 13—NOTICE TO LANDOWNER OF SURFACE OPERATIONS

- Section 50-1301. Short title.
 50-1302. Prospectors and miners to ascertain ownership of land.
 50-1303. Written notice and approval required before commencement of operations.
 50-1304. Discovery pits on federal lands exempt.
 50-1305. Operations pursuant to prospecting permits or other agreements exempt.
 50-1306. Violation a misdemeanor—immunity of landowner.

50-1301. Short title. This act may be referred to as "The Landowner Notification Act."

History: En. Sec. 1, Ch. 335, L. 1971. the owner of the land surface in advance of any operations which will disturb the

Title of Act surface of such land and obtain authorization to operate thereon.

An act requiring prospectors, miners, or other persons in this state to advise

50-1302. Prospectors and miners to ascertain ownership of land. All prospectors for minerals, miners, or other persons contemplating surface disturbance by mechanical equipment other than hand tools on lands within the state of Montana are required to ascertain the ownership and possessory right of any land before performing any such operations causing surface disturbance, such as road or trail building or any other work disturbing the surface on such land.

History: En. Sec. 2, Ch. 335, L. 1971.

50-1303. Written notice and approval required before commencement of operations. The land or surface of land not owned in fee by such person may not be disturbed in any manner until the owner or manager of the surface of said land, and the owner of a possessory right to said land, is given notice in writing, accompanied by a map showing the specific locations involved, of such person's intent or desire to enter upon such land which will sufficiently disclose the plan of work and operations, including contemplated measures for the protection and restoration of the land and waters, to enable the owner or manager of the land and any person holding a possessory right to such land to evaluate the extent of disturbance contemplated and the effectiveness and sufficiency of the protection and restoration measures planned.

(a) Before commencement of any work or operations on any such lands, such person must first obtain from the surface owner of private land specific written approval of the proposed work or operations.

(b) In the case of city, county, state, or federally owned lands, such person must first obtain the authorization or permit, if any, required by the applicable law and the regulations of the governmental agency or board charged by law with the administration or management of the surface of such land.

History: En. Sec. 3, Ch. 335, L. 1971.

50-1304. Discovery pits on federal lands exempt. Discovery pits which may be required to locate a mining claim on federal lands open to

mineral entry, when excavated entirely by hand methods with hand tools, are exempt from the operation of this act.

History: En. Sec. 4, Ch. 335, L. 1971.

50-1305. Operations pursuant to prospecting permits or other agreements exempt. The provisions of this act shall not apply where operations upon land are performed in accordance with the terms of a prospecting permit or a lease covering any mineral interest in said land or other valid agreements authorizing such operations which are in full force and effect, or by the owner of one hundred per cent (100%) of the rights to any mineral interest upon the land in which such mineral ownership is vested.

History: En. Sec. 5, Ch. 335, L. 1971.

50-1306. Violation a misdemeanor—immunity of landowner. Any work done in violation of this act is punishable as a misdemeanor and each day of violation shall constitute a separate offense. The owner or lessor shall not be liable for injury to any person on either owned or leased land.

History: En. Sec. 6, Ch. 335, L. 1971.

TITLE 51—MONOPOLIES

Chapter 1. Unfair Practices Act, 51-113.

3. Montana Cigarette Sales Act, 51-301 to 51-314.

CHAPTER 1—UNFAIR PRACTICES ACT

Section 51-113. Montana trade commission—administration of act by—intervention—orders—review—appeals—process—finality of order.

51-113. Montana trade commission—administration of act by—intervention—orders—review—appeals—process—finality of order. (1) The Montana trade commission shall have the administration of this act; and the members thereof shall not receive any additional compensation for their services other than their salaries prescribed by law. The commission shall meet not less than six (6) times a year on or about the fifteenth (15th) day of the month, and as often and wherever it may decide other meetings are necessary. Suitable notice of all meetings shall be given as the commission may determine.

Said commission is empowered and directed to prevent any person, firm or corporation from violating any of the provisions of this chapter.

(2) Upon receiving notice from any person that any person, firm or corporation is violating or has violated any of the provisions of this chapter, the commission shall immediately notify the person giving such notice either to appear at its next regular or special meeting or to make a written reply to show probable cause of such violation. If probable cause is shown, the commission must thereafter make its own investigation and within sixty (60) days of the finding of probable cause must make a written report of its investigation and must mail a copy of its findings to the person initially giving notice of a violation.

If, after such investigation the commission shall have reason to believe that any such person, firm or corporation has been or is engaging in any course of conduct or doing any act or acts in violation of the provisions of this chapter and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, firm or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five (5) days after the service of said complaint. Any such complaint may be amended by the commission in its discretion at any time five (5) days prior to the issuance of an order based thereon. The person, firm or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, firm or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, firm or corporation may make application, and upon good cause shown may be allowed by the commission to intervene and appear in said pro-

ceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, firm or corporation an order requiring such person, firm or corporation to cease and desist from such acts or conduct. Until a transcript of the record in such hearing shall have been filed in a district court, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

(3) to (10). * * * [Same as parent volume.]

History: En. Sec. 12, Ch. 80, L. 1937; amd. Sec. 1, Ch. 50, L. 1939; amd. Sec. 1, Ch. 142, L. 1967.

Amendments

The 1967 amendment inserted the second sentence in the first paragraph of sub-

section (1); inserted the first paragraph in subsection (2); substituted "If, after such investigation" for "Whenever" at the beginning of the second paragraph in subsection (2); and inserted arabic numbers after the written numbers in subsections (2), (4), (7) and (8).

CHAPTER 3—MONTANA CIGARETTE SALES ACT

- Section 51-301. Declaration of policy.
 51-302. Short title.
 51-303. Definitions.
 51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent.
 51-305. Sales from wholesaler to wholesaler.
 51-306. Combination sales.
 51-307. Exceptions.
 51-308. Sales to meet competition.
 51-309. Contracts in violation void.
 51-310. Evidence to be considered as bearing on bona fides of cost.
 51-311. Cigarettes purchased outside ordinary trade channels.
 51-312. Cost survey.
 51-313. Civil suits for violation of act.
 51-314. Powers of board.

51-301. Declaration of policy. It is hereby declared that the advertising, offering for sale or sale of cigarettes below cost, in the retail and wholesale trades, with the intent of injuring competitors or lessening competition, is an unfair and deceptive business practice. It is hereby declared to be the policy of the state to promote the public welfare and it is the purpose of this act to carry out that policy in the public interest and stabilize the sale of cigarettes, maximize and protect the state revenues from this source.

History: En. Preamble, Ch. 258, L. 1965.

Title of Act

An act to prevent unfair competition and unfair trade practices in the sale of cigarettes; to prohibit sales of cigarettes below cost; to protect and stabilize the collection of taxes on the sale of cigarettes

and revenues from the licensing of persons engaged in the sale of cigarettes; to confer powers and impose duties on the state board of equalization and on persons, as herein defined, engaged in the sale of cigarettes at retail or wholesale; and providing remedies and imposing penalties for violations thereof.

51-302. Short title. This act shall be known, designated and cited as "The Montana Cigarette Sales Act."

History: En. Sec. 1, Ch. 258, L. 1965.

51-303. Definitions. When used in this act, the following words and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning: (1) "Person" shall mean and include any individual, firm, association, company, partnership, corporation for profit or nonprofit corporation, joint stock company, club, agency, syndicate, co-operative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) "Wholesaler" shall include any person who:

(a) purchases cigarettes directly from the manufacturer; or

(b) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers; or

(c) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this act.

(3) "Retailer" shall mean and include any person who operates a store, stand, booth or concession for the purpose of making sales of cigarettes at retail.

(4) "Administrative agency" or "board" shall mean the state board of equalization of Montana and, where the meaning of the context so requires, all deputies and employees duly authorized by such board.

(5) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(6) "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever.

(7) "Sell at wholesale," "sale at wholesale" and "wholesale" sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(8) "Sell at retail," "sale at retail" and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(9) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower.

(10) (a) The term "cost to the wholesaler" shall mean the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler," as evidenced by the standards and methods of accounting regularly employed by the said wholesaler in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance and advertising. The cost of doing business by a wholesaler shall also include any rebates, patronage dividends or concessions no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said wholesaler, expressed as a percentage and applied to the "basic cost of cigarettes."

(b) In the absence of the filing with the board of proof which the board declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be five per centum (5%) of the "basic cost of cigarettes" to the wholesaler, plus cartage to the retail outlet, if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the board of satisfactory proof of a lesser or higher cost, shall be considered to be three-fourths of one per centum ($\frac{3}{4}$ of 1%) of the "basic cost of cigarettes" to the wholesaler.

(11) (a) The term "cost to the retailer" shall mean the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer" as evidenced by the standards and methods of accounting regularly employed by the said retailer in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs, (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance, and advertising, including any rebates or concession no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said retailer, expressed as a percentage and applied to the "basic costs of cigarettes"; provided, however, that any retailer who purchases from the manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining "cost to the retailer," pursuant to this subsection, add the "cost of doing business by the wholesaler," as determined in subparagraph 10 (b) of this act, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer."

(b) In the absence of the filing with the board of satisfactory proof of a lesser or higher cost of doing business by the retailer making the

sale, the "cost of doing business by the retailer" shall be presumed to be ten per centum (10 %) of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the board of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer," who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be ten per centum (10 %) of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler."

(12) "Business day" shall mean any day other than a Sunday or a legal holiday.

History: En. Sec. 2, Ch. 253, L. 1965; amd. Sec. 1, Ch. 130, L. 1967.

Amendments

The 1967 amendment in subparagraph (10)(a) substituted "by the standards and methods" * * * shall include within said costs" for "accounting, which shall include allocation of overhead costs and expenses, paid or incurred, and must include" after "as evidenced by" and added the last sentence; in subparagraph (11) (a) substituted "the said retailer" * * * shall include within said costs" for "him in his allocation of overhead costs and expenses, paid or incurred, and must include" after "employed by," inserted "costs" after "labor," inserted "business" before "taxes," inserted "including any rebates" * * * the "basic costs of cigarettes" after "advertising," inserted "how-

ever" after "provided," substituted "purchases from the manufacturer" * * * wholesale quantities" for "in connection with the retailer's purchases by a wholesaler" after "any retailer who," substituted "as determined in" for "as defined in section 2" before "subparagraph (10) (b)," and added "(b)" after "subparagraph (10)."

Cost to Wholesaler

Board of equalization formula requiring cigarette wholesaler to reduce wholesale price by tax discount provided for under section 84-5606.12 was improper because full face value of the tax insignia was to be used in determining wholesale price. *Montana Assn. of Tobacco & Candy Distributors v. State Board of Equalization*, — M —, 476 P 2d 775.

51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent. It shall be unlawful and a violation of this act:

(1) For any retailer or wholesaler with intent to injure a competitor or substantially lessen competition;

(a) To advertise, offer to sell or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as the case may be.

(b) To offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business.

(2) For any retailer:

(a) To induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than "cost to the wholesaler," as defined in this act.

(b) To induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

(3) Any retailer or wholesaler who violates the provisions of this section shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than five hundred dollars (\$500) for each such offense. Any individual who, as a director, officer, partner, member or agent of any person violating the provisions of this act, assists or aids, directly or indirectly, in such violation, shall, equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

(4) Evidence of advertisement, offering to sell or sale of cigarettes by any retailer or wholesaler at less than cost to him, or evidence of any offer of a rebate in price, or the giving of a rebate in price, or an offer of a concession, or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, or the inducing or attempt to induce, or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer, shall be prima facie evidence of intent to injure competitors or substantially lessen competition.

History: En. Sec. 3, Ch. 258, L. 1965.

51-305. Sales from wholesaler to wholesaler. When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter "cost to the wholesaler," as provided by section 2 [51-303], subparagraph (10) of this act, except that no such sale shall be made at a price less than the "basic cost of cigarettes," as defined in said section 2 [51-303], subparagraph (9) of this act, but the latter wholesaler, upon resale to a retailer, shall be considered to be the wholesaler governed by the provisions of said section 2 [51-303], subparagraph (10) of this act.

History: En. Sec. 4, Ch. 258, L. 1965.

51-306. Combination sales. In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale or sales involving the giving of any gift or concession of any kind whatever (whether it be coupons or otherwise) if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, the retailer's or wholesaler's combined selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler," respectively, of the total costs of all articles, products, commodities, gifts and concessions included in such transactions.

History: En. Sec. 5, Ch. 258, L. 1965.

51-307. Exceptions. The provisions of this act shall not apply to sales at retail or sales at wholesale made (a) as an isolated transaction and not in the usual course of business; (b) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale, shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale, shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (c) where cigarettes are sold upon the final liquidation of a business; or (d) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

History: En. Sec. 6, Ch. 258, L. 1965.

51-308. Sales to meet competition. (a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in this act. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler, as prescribed in this act. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in section 6 [51-307] shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the "price of a competitor," under this section, the "lowest cost to the retailer," or the "lowest cost to the wholesaler," as the case may be, determined by any "cost survey," made pursuant to section 11 [51-312] of this act, may be considered to be the "price of a competitor," within the meaning of this section.

History: En. Sec. 7, Ch. 258, L. 1965.

51-309. Contracts in violation void. Any contract, expressed or implied, made by any person in violation of any of the provisions of this act, is declared to be an illegal and void contract and no recovery thereon shall be had.

History: En. Sec. 8, Ch. 258, L. 1965.

51-310. Evidence to be considered as bearing on bona fides of cost. (a) In determining "cost to the retailer" and "cost to the wholesaler," the board or a court shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of this act purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal,

customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Merchandise given gratis, or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

History: En. Sec. 9, Ch. 258, L. 1965.

51-311. Cigarettes purchased outside ordinary trade channels. In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt or closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased, through the ordinary channels of trade.

History: En. Sec. 10, Ch. 258, L. 1965.

51-312. Cost survey. Where a cost survey pursuant to cost accounting practices, including those defined in section 2 [51-303] (10) (a), has been made by the board, or by a trade association or other industry group, for the trading area in which the offense is committed, to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler," said cost survey shall be considered to be competent evidence for use in proving the cost to the person complained against within the provisions of this act.

History: En. Sec. 11, Ch. 258, L. 1965.

51-313. Civil suits for violation of act. (a) In addition to penalties provided by section 3 [51-304] of this act, any person injured by any violation of this act, or any trade association which is representative of such a person, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation. If in such action a violation of this act shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorney's fee. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this act may maintain an action for damages alone in any court of competent jurisdiction and the measure of damages in such action shall be the same as prescribed in subsection (a) of this section.

History: En. Sec. 12, Ch. 258, L. 1965.

51-314. Powers of board. (a) In addition to the penalties and rights imposed and set forth in sections 3 [51-304] and 12 [51-313] of this act,

the board shall enforce the provisions of this act. The board shall have the power to adopt, amend and repeal rules and regulations necessary to enforce and administer the provisions of this act. The board is given full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state of Montana upon sufficient cause appearing of the violation of this act or upon the failure of such licensee or permittee to comply with any of the provisions of this act.

(b) No license or licenses shall be suspended or revoked except upon notice to the licensee, and after a hearing prescribed by said board at its principal office. The board, upon a finding by it that the licensee has failed to comply with any provisions of this act or any rule or regulation promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than five (5) nor more than twenty (20) consecutive business days, and, in the case of a second or plural offender, shall suspend said license or licenses for a period of not less than twenty (20) consecutive business days nor more than twelve (12) months, and, in the event the board finds the offender has been guilty of willful and persistent violations, he may revoke such licensee's license or licenses.

(c) Any person whose license or licenses have been so revoked may apply to the board at the expiration of one year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by the board if it shall appear to the satisfaction of said board that the licensee will comply with the provisions of this act and the rules and regulations promulgated thereunder.

(d) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever. Nor shall any disciplinary proceedings or action be barred or abated by the expiration, transfer, surrender, continuance, renewal or extension of any license issued under the provisions of the "cigarette tax law," as provided in articles of chapter 11 of the Revised Codes of Montana, 1947.

Any determination by the board and any order of suspension or revocation of a license or licenses thereunder, or refusal to reinstate a license or licensee after revocation, shall be reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction.

History: En. Sec. 13, Ch. 258, L. 1965.

Separability Clause

Section 14 of Ch. 258, Laws 1965 read "Provisions of act severable. The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the re-

mainder of this act shall continue in full force and effect."

Repealing Clause

Section 15 of Ch. 258, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Cross-References

Cigarette tax, secs. 84-5606 to 84-5606.31.

TITLE 52—MORTGAGES

- Chapter 1. Mortgages in general, 52-114, 52-116, 52-117.
2. Mortgages of real property, 52-212.
3. Security interests in personal property, 52-312 to 52-314, 52-319 to 52-323.
4. Small tract financing act, 52-401 to 52-417.

CHAPTER 1—MORTGAGES IN GENERAL

- Section 52-114. Assignment of mortgage—recording—notice—address of assignee prerequisite to recording.
52-116. Recording of subordination or waiver agreements—real estate.
52-117. Uniform Commercial Code—applicability.

52-114. (8259) Assignment of mortgage—recording—notice—address of assignee prerequisite to recording. An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons including subsequent purchasers, encumbrancers, mortgagees or other lien holders.

Any such assignment shall contain the assignee's post-office address at his place of residence, and shall not be entitled to be recorded or filed unless it contains such post-office address. [Effective January 1, 1965.]

History: En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; amd. Sec. 11-131, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2934.

Amendment

The 1963 amendment deleted "and an assignment of a chattel mortgage may be filed in like manner as a chattel mortgage" before "and the record thereof" in the first paragraph.

52-116. Recording of subordination or waiver agreements—real estate. That a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "and a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any chattel mortgage on file, or the personal

property therein described, may be filed in like manner as a chattel mortgage" before "and such record" in the first sentence; deleted "or such filing as the case may be" after "and such record" in the first sentence; and corrected an apparent typographical error which originated in the Laws of 1937.

52-117. Uniform Commercial Code—applicability. In the event of conflict between any provision of this chapter and the Uniform Commercial Code, the latter shall govern. [Effective January 1, 1965.]

History: En. 52-117 by Sec. 11-133, Ch. 264, L. 1963.

CHAPTER 2—MORTGAGES OF REAL PROPERTY

Section 52-212. Mortgages and deeds of trust covering real and personal property.

52-212. (8273) Mortgages and deeds of trust covering real and personal property. All mortgages and deeds of trust covering both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned. [Effective January 1, 1965.]

History: En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; amd. Sec. 11-134, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "or assignments for the benefit of creditors" after "deeds of trust" near the beginning of the section; made minor changes in phraseology; added "so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned" at the end of the section; deleted from the end of the section language reading, "and must be recorded

in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding the possession of such property is retained by such corporation, association or partnership, or by such individual or individuals, but any such mortgages, deeds of trust, or assignments for the benefit of creditors must be accompanied by the affidavit of good faith required to accompany mortgages of personal property, and also by a receipt for an executed copy of the instrument signed on behalf of the corporation by its president, vice-president, secretary, assistant secretary or managing agent" and three other sentences, for text of which see parent volume.

CHAPTER 3—SECURITY INTERESTS IN PERSONAL PROPERTY

Section 52-312. Foreclosure of security interests in personal property—by action—by sheriff's sale.

52-313. Sales—commencement and postponement.

52-314. Report of sales, and filing thereof.

52-319. Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed.

52-320. Contents of notices.

52-321. Duty of secured parties to file satisfactions of security agreements.

52-322. Fees—disposal of.

52-323. Brand recorder or livestock commission not responsible for collection or payment of money under security agreements.

52-301 to 52-311. (8275 to 8285) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 81, L. 1907; Secs. 1 to 11, Ch. 86, L. 1913; Sec. 1, Ch. 94, L. 1915; Sec. 1, Ch. 152, L. 1919; Sec. 1, Ch. 183, L. 1919; Sec. 1, Ch. 32, L. 1923; Sec. 1, Ch. 116, L. 1925; Sec. 1, Ch. 36, L. 1941; Sec. 1, Ch. 149, L. 1949;

Secs. 1, 2, Ch. 67, L. 1961), relating to execution, filing, duration, subrogation, protection, and proof of mortgages on personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-312. (8286) Foreclosure of security interests in personal property—by action—by sheriff's sale. An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest; but the remedial scope of proceedings for the foreclosure of interests subject to the Uniform Commercial Code—Secured Transactions is governed by Part 5 thereof.

A security agreement covering personal property may contain a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, on request of the secured party and the delivery to the sheriff of a copy of such security agreement, to take possession of such property in case of default and to sell the same. If a security agreement contains such clause and if the secured party complies with the terms thereof, it is hereby made the duty of such sheriff, upon the request of the secured party or his legal representative or assigns, to take possession of such property and to advertise and sell the whole or any part of the same; and at such sale the secured party, or his representatives or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff shall require a reasonable indemnity bond from the secured party or his assigns before taking possession of or selling the said property. Notice of sale, application of the proceeds, liability for deficiency, and effect of disposition shall be as provided in section 9-504 [87A-9-504] of the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R. C. M. 1921; amd. Sec. 11-135, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "security interest" for "mortgage" throughout the section and made numerous other changes. For previous text, see parent volume.

Deficiency Judgment after Foreclosure Sale

Deficiency judgment after foreclosure sale was proper even though sale was not public and contract contained clause that "notice [be] given in the manner provided in Section 52-312," since mortgagee was given power of sale by contract, with contract setting forth statute as an acceptable method of sale. *Bell v. Cole*, 154 M 43, 459 P 2d 692.

52-313. (8287) Sales—commencement and postponement. All sales made under the provisions of this act shall be commenced between the hours of nine o'clock in the morning and five o'clock of the afternoon of the day specified in the notice, and within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff one week, by public announcement at the time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the debtor. [Effective January 1, 1965.]

History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor" for "mortgagor" at the end of the section.

Notice of Sale

Where notice of foreclosure sale of mortgaged sheep was posted out of sight of the actual sale and misnamed the location of the sale, mortgagee had failed to ful-

fill the strict statutory requirements in enforcing the lien and the sale was void. *Goggins v. Bookout*, 141 M 449, 378 P 2d 212, distinguished in *Bell v. Cole*, 154 M 43, 459 P 2d 692.

52-314. (8288) Report of sales, and filing thereof. Within ten days after the sale of any property subject to a security interest, as herein provided, the person making the sale shall make out in writing a full report, under oath, of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received therefor, the name of the person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, a statement of the manner in which notice of the sale was given, and the disposition made by him of the proceeds of the sale, and shall file the same in the office of the county clerk and recorder, or other filing officer, where the financing statement respecting the security agreement is filed; which report shall be received in all courts as prima-facie evidence of the facts therein stated. The county clerk and recorder or other filing officer shall properly index said report and attach the report of sale to the financing statement on file. [Effective January 1, 1965.]

History: En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R. C. M. 1921; amd. Sec. 11-137, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "property subject to a security interest" near the beginning of the section for "mortgaged property"; substituted "a statement of the manner in which notice of the sale

was given" for "with the statement that the same was posted as herein provided"; inserted "or other filing officer" after "county clerk and recorder" in two places; substituted "financing statement respecting the security agreement" near the end of the first sentence and "financing statement" in the second sentence for "mortgage."

52-315 to 52-317. (8289 to 8290.1) Repealed.

Repeal

These sections (Secs. 15, 16, Ch. 86, L. 1913; Sec. 1, Ch. 100, L. 1923; Sec. 1, Ch. 3, L. 1941), relating to satisfaction of

chattel mortgages and to mortgages on crops and livestock, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-319. (3308.1) Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed. The general recorder of marks and brands of the state of Montana shall accept and file in the office of the general recorder of marks and brands, notices of security agreements, renewals, assignments and satisfactions thereof covering livestock owned by any person, firm, corporation, or association, and bearing his, their, or its recorded brand, and shall list such notices on the official records of marks and brands kept by him, and also shall cause to be listed said notices in the offices of the stock inspectors, employed by the livestock commission and stationed at the several central livestock markets where records are kept of marks and brands. All forms on which such notices shall be given shall be prescribed by the livestock commission and shall be furnished by the secured party, who shall give such notice. No livestock market to which livestock is shipped shall be held liable to any secured party for

the proceeds of livestock sold through such livestock market by the debtor unless notice of such security agreement is filed as hereinbefore provided. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 91, L. 1935; amd. Sec. 1, Ch. 36, L. 1949; amd. Sec. 11-138, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

curity agreements," "secured party" in two places, "debtor," and "security agreement" respectively for "chattel mortgages," "mortgagee of livestock," "mortgagee," "mortgagor," and "mortgage"; and made a minor change in phraseology.

52-320. (3308.2) Contents of notices. Such notices shall consist of a statement showing the date of security agreement, the names and addresses of the debtors and secured parties, and/or holders and owners thereof, a description of the livestock covered by said security agreement, and in case of notice of renewal, the notice shall state the date of renewal thereof and in the case of a notice of assignment of a security interest, such notice shall state the date of such assignment, and a description of the security agreement as to which such assignment is made and the parties to the assignment, and such other or additional information as may be required from time to time by the livestock commission of the state of Montana. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 91, L. 1935; amd. Sec. 11-139, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

curity interest" for "mortgage" and made numerous other changes in the required contents of the notices. For previous text, see parent volume.

52-321. (3308.3) Duty of secured parties to file satisfactions of security agreements. It shall be the duty of the secured parties, who filed notices of security agreements, renewals and assignments thereof, with the general recorder of marks and brands, as provided for in this act, to file notices of satisfaction of such security agreements with the general recorder of marks and brands immediately upon the satisfaction of said security agreement. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 91, L. 1935; amd. Sec. 11-140, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

cured parties," "security agreements" in two places, and "security agreement," respectively, for "mortgagees," "chattel mortgages," "mortgages," and "mortgage."

52-322. (3308.4) Fees—disposal of. The general recorder of marks and brands shall charge for filing and listing such notices of security agreements the sum of two dollars (\$2) for each recorded brand listed in each security agreement, and for filing and listing each notice of satisfaction or renewal or assignment of such security agreement, the sum of two dollars (\$2) for each recorded brand listed therein. All fees so charged shall be paid into the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 91, L. 1935; amd. Sec. 1, Ch. 135, L. 1953; amd. Sec. 96, Ch. 147, L. 1963; amd. Sec. 11-141, Ch. 264, L. 1963; amd. Sec. 1, Ch. 12, L. 1969.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

Chapter 264, Laws 1963, substituted "security agreement" or "security agreements" for "chattel mortgage" or "chattel mortgages" in three places in the first sentence.

The 1969 amendment increased the filing and listing fees from "one dollar" to "two dollars."

52-323. (3308.5) Brand recorder or livestock commission not responsible for collection or payment of money under security agreements. Neither the general recorder of marks and brands nor the livestock commission, nor any of its agents or employees shall be held responsible or liable to either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock, or renewals, satisfactions, or assignments thereof as provided in this act; providing the provisions of this act are carried out in good faith. [Effective January 1, 1965.]

History: En. Sec. 5, Ch. 91, L. 1935; amd. Sec. 11-142, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor or secured party" for "mortgagor or

mortgagee"; substituted "security agreement covering livestock" for "livestock mortgage"; and deleted the words "on account of the filing and listing of notices of chattel mortgage" which preceded "or renewals."

CHAPTER 4—SMALL TRACT FINANCING ACT

- Section 52-401. Short title.
 52-402. Declaration of policy.
 52-403. Definitions.
 52-404. Authorization of trust indentures.
 52-405. Qualifications of trustee.
 52-406. Reconveyance upon performance—liability for failure to reconvey.
 52-407. Time within which foreclosure must be commenced.
 52-408. Foreclosure by advertisement and sale.
 52-409. Notice of sale to be mailed, posted and published.
 52-410. Trustee's deed.
 52-411. Possession.
 52-412. Discontinuance of foreclosure proceedings when entire amount of default paid.
 52-413. Disposition of proceeds of sale.
 52-414. Deficiency judgment not allowed.
 52-415. Requests for copies of notice of sale.
 52-416. Trustee's fees and attorney's fees.
 52-417. Trust indenture deemed to be mortgage on real property.

52-401. Short title. This act may be cited as the "Small Tract Financing Act of Montana."

History: En. Sec. 1, Ch. 177, L. 1963.

Title of Act

An act authorizing the optional use of trust indentures as security instruments in the financing of small tracts embracing three acres of land, or less; providing for the conveyance of title to a trustee to secure the performance of an obligation and for reconveyance upon performance; conferring a power of sale upon the trustee under a trust indenture and prescribing the time and manner in which such power may be exercised; providing for the sale of the property at trustee's sale in the event of default; prescribing the form of notice of sale and providing for the recordation, mailing, posting and publication of notice of sale; providing for

trustee's deeds and the form and effect thereof; providing for the disposition of the proceeds of sale; disallowing deficiency judgment in certain cases; providing for possession following sale; defining the fees and expenses chargeable to the grantor of a trust deed; providing for discontinuance of foreclosure by advertisement and sale; relating to the applicability of mortgage laws to trust indenture transactions; amending sections 93-6005, 93-6006, and 93-6007, R.C.M. 1947, relating to sales of real estate under powers of sale in mortgages and rights of redemption, to exclude therefrom trust indentures as defined in this act; and providing a short title, a severability clause and an effective date.

52-402. Declaration of policy. Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate of not more than three acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than three acres as hereinafter provided.

History: En. Sec. 2, Ch. 177, L. 1963.

Constitutionality

This act is not unconstitutional on grounds that it is special legislation favoring rural landowners, that its withdrawal of redemption rights and its notice pro-

visions violate due process, or that it provides for statutory power of sale to be read into all agreements using trust indentures even where agreement between parties does not so provide. *Great Falls Nat. Bank v. McCormick*, 152 M 319, 448 P 2d 991.

52-403. Definitions. As used in this act, unless the context requires otherwise:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Trust indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest.

(5) "Three acres" means three acres of land.

Where the trust indenture states that the real property involved does not exceed three acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make a transfer, trust, and power of sale.

History: En. Sec. 3, Ch. 177, L. 1963.

52-404. Authorization of trust indentures. Transfers in trust of any interest in real property of an area not exceeding three acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The

power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

History: En. Sec. 4, Ch. 177, L. 1963.

52-405. Qualifications of trustee. (1) The trustee of a trust indenture under this act shall be:

- (a) An attorney who is licensed to practice law in Montana; or
- (b) A bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or
- (c) A title insurance or abstract company authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture, or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: En. Sec. 5, Ch. 177, L. 1963.

52-406. Reconveyance upon performance—liability for failure to reconvey. Upon performance of the obligation secured by the trust indenture, the trustee upon written request of the beneficiary shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

History: En. Sec. 6, Ch. 177, L. 1963.

52-407. Time within which foreclosure must be commenced. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: En. Sec. 7, Ch. 177, L. 1963.

52-408. Foreclosure by advertisement and sale. (1) The trustee may foreclose a trust indenture by advertisement and sale under this act if:

- (a) The trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture, or some part thereof, is situated;

(b) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust indenture, or by their successors in interest, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(c) The trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture, or some part thereof, is situated, a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(i) The names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(ii) A description of the property covered by the trust indenture;

(iii) The book and page of the mortgage records where the trust indenture is recorded;

(iv) The default for which the foreclosure is made;

(v) The sum owing on the obligation secured by the trust indenture;

(vi) The trustee's or beneficiary's election to sell the property to satisfy the obligation;

(vii) The date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9:00 a.m. and 4:00 p.m., Mountain Standard Time;

(viii) The place of sale which shall be at the courthouse of the county or one of the counties where the property is situated, or at the location of the property, or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

(2) A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided.

History: En. Sec. 8, Ch. 177, L. 1963.

52-409. Notice of sale to be mailed, posted and published. (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) The grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) Each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) Each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request.

(iv) Any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) Any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold;

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least 3 public places in each county in which the property, or some part thereof, is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels and any person, including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to re-sell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

History: En. Sec. 9, Ch. 177, L. 1963.

52-410. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this act relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection (2) of section 9 [52-409 (2)] of this act, shall be prima-facie

evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest and claim of the grantor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold including all such right, title, interest and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

History: En. Sec. 10, Ch. 177, L. 1963.

52-411. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: En. Sec. 11, Ch. 177, L. 1963.

52-412. Discontinuance of foreclosure proceedings when entire amount of default paid. Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal, or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred. If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute, acknowledge and deliver to him a request that the trustee execute, acknowledge and deliver a cancellation of the recorded notice of sale under such trust indenture. Any beneficiary under a trust indenture, or his assignee, who, for a period of 30 days after such demand

refused to request the trustee to execute, acknowledge and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded and a statement that such notice of sale is canceled.

History: En. Sec. 12, Ch. 177, L. 1963.

52-413. Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows: (1) To the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) To the obligation secured by the trust indenture;

(3) The surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

History: En. Sec. 13, Ch. 177, L. 1963.

52-414. Deficiency judgment not allowed. When a trust indenture executed in conformity with this act is foreclosed by advertisement and sale, no other or further action, suit or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond or other obligation secured by the trust indenture, or against any other person obligated on such note, bond or other obligation.

History: En. Sec. 14, Ch. 177, L. 1963.

52-415. Requests for copies of notice of sale. At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in subsection (1) of section 9 [52-409(1)] of this act may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title

to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: En. Sec. 15, Ch. 177, L. 1963.

52-416. Trustee's fees and attorney's fees. Reasonable trustee's fees and attorney's fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of section 12 [52-412] of this act, the reasonable trustee's fees and attorney's fees to be charged to the grantor shall not exceed \$150.00. In no event shall trustee's fees and attorney's fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: En. Sec. 16, Ch. 177, L. 1963.

52-417. Trust indenture deemed to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this act, in which event the provisions of this act shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: En. Sec. 17, Ch. 177, L. 1963.

Separability Clause

Section 21 of Ch. 177, Laws 1963 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part

remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 22 of Ch. 177, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

TITLE 53—MOTOR VEHICLES

- Chapter 1. Registration of motor vehicles—duties of registrar, 53-101, 53-102, 53-106, 53-106.1, 53-106.6 to 53-110, 53-112 to 53-115, 53-117, 53-118, 53-118.6 to 53-120, 53-122, 53-129, 53-133, 53-136, 53-139, 53-139.1, 53-145 to 53-147.
4. Elimination of reckless driving—responsibility of motor vehicle owners and operators, 53-418, 53-420 to 53-422, 53-432, 53-438.
5. State-owned or leased motor vehicles, 53-514 to 53-521.
6. Additional fees or taxes on motor vehicles, 53-626, 53-638.1, 53-642.
7. Reciprocity and proportional registration, 53-701 to 53-724.
8. Markings on trucks and heavy vehicles, 53-801 to 53-803.
9. Removal and sale of abandoned vehicles, 53-901 to 53-909.
10. Snowmobiles, 53-1012 to 53-1028.

CHAPTER 1—REGISTRATION OF MOTOR VEHICLES— DUTIES OF REGISTRAR

- Section 53-101. Duties of registrar of motor vehicles—records.
- 53-102. Penalty for violations—enforcement of provisions.
- 53-106. Number plates.
- 53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.
- 53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license.
- 53-106.7. Distinctive plates for national guardsmen.
- 53-106.8. Free license plates to disabled veterans.
- 53-106.9. Nontransferability of disabled veterans' free license plates.
- 53-106.10. Veterans' free plates limited to one automobile.
- 53-106.11. Violations of act or wrongfully attempting to secure veterans' free plates a misdemeanor—penalties.
- 53-107. Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand.
- 53-108. Renewal of registration.
- 53-109. Transfer of title or interest.
- 53-109.1. Used motor vehicles—transfer to and from dealers.
- 53-109.2. Applicability of sticker provisions to new car purchases.
- 53-109.3. Temporary windshield sticker.
- 53-109.4. Grace period—penalty.
- 53-110. Filing of liens, rights, procedure, fees.
- 53-112. Fee for original certificate of ownership and transfer of title.
- 53-113. Lost certificates.
- 53-114. Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise.
- 53-115. Time for making application.
- 53-117. Disposition of taxes.
- 53-118. Application for dealer's license.
- 53-118.6. Demonstration of trucks and trailers authorized—dealer's plate to be used.
- 53-118.7. Application for truck demonstration permit—form and contents—number of permits authorized.
- 53-118.8. Operation under truck demonstration permit—period of permit—rental under permit prohibited.
- 53-118.9. Violation of truck demonstration provisions.
- 53-118.10. Disposition of truck demonstration fees.
- 53-119. Must have license plates.
- 53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue.
- 53-120. Replacing number plates.

- 53-122. Registration fees of motor vehicles—registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees.
- 53-129. Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.
- 53-133. Definitions.
- 53-136. Alteration or forgery of certificate of title or assignment thereof and penalty therefor.
- 53-139. Penalty for sale of vehicle with engine number altered or changed—application for special number.
- 53-139.1. Penalty for altering identification number.
- 53-145. Expiration of registration on transfer of ownership of vehicle—duty to remove plates.
- 53-146. Transfer of license plates to another motor vehicle.
- 53-147. New registration required for transferred vehicle.

53-101. (1755) Duties of registrar of motor vehicles—records. 1. The warden of the state penitentiary shall be, and is hereby constituted the registrar of motor vehicles, trailers and semitrailers, and as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles, trailers and semitrailers of every kind, and certificates of registration and ownership thereof, and of all dealers in motor vehicles.

2. In the case of motor vehicles, trailers and semitrailers, the record shall show the following: Name of owner, residence by town and county, business address, name and address of conditional sales vendor, mortgagee or other lien holder and amount due under contract or lien, manufacturer of car, manufacturer's designation of style of car or vehicle, identifying number, year of manufacture, character of motive power and shipping weight of car as shown by the manufacturer and the distinctive license number assigned such car or vehicle; and, if a truck or trailer, the number of tons capacity, and such other information as may from time to time be found desirable.

3. The registrar shall file applications for registration received by him from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) Under distinctive license number assigned to vehicle by the county treasurers.

(b) Alphabetically under name of owners.

(c) Numerically under make and identifying number of vehicle.

(d) Such other index of registration as registrar shall deem expedient. Vehicle registration records and indexes, and driver's license records and indexes, may be maintained by electronic recording and storage media.

4. In the case of dealers the records shall show the information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer.

5. The registrar of motor vehicles shall appoint such deputies, subordinate officers, clerks, investigators and other employees as may be necessary to carry out this act, providing there be selected as many

of the clerical help from the inmates of the state prison as the registrar determines to be possible. The salaries of all such appointees shall be fixed by the registrar of motor vehicles as authorized by the state board of examiners, with respect to salaries of other subordinate state officers and employees.

6. All office equipment, books, files and records belonging to the motor department shall be in the care and general custody and control of the registrar of motor vehicles at the state penitentiary. In order to prevent an accumulation of unneeded records and files the registrar of motor vehicles shall have the authority and it shall be his duty to destroy all records and files which have ceased to be of any value.

(7) and (8). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755; R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; Subdivisions 5 and 6 amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957; amd. Sec. 22, Ch. 177, L. 1965; amd. Sec. 1, Ch. 256, L. 1965; amd. Sec. 1, Ch. 74, L. 1967; amd. Sec. 1, Ch. 115, L. 1969; amd. Sec. 1, Ch. 207, L. 1969; amd. Sec. 1, Ch. 214, L. 1971.

Amendments

Chapter 177, Laws 1965, deleted from the beginning of subsection 5 a sentence reading, "The registrar of motor vehicles shall qualify by giving a bond of twenty-five thousand dollars (\$25,000.00), providing for the faithful performance of his duty"; and substituted "The registrar of motor vehicles" for "He" at the beginning of the present first sentence of subsection 5.

Chapter 256, Laws 1965, substituted "information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer" for "name of the applicant, his residence and address by town and county, his business address, the distinctive number assigned him, and the name or names of new cars handled by him" at the end of subsection 4.

The 1967 amendment deleted "of motor and accessories dealers and of operators and chauffeurs" after "semitrailleurs"; inserted "and" before "of all dealers";

and deleted "and automobile accessories and of operators and chauffeurs" after "in motor vehicles" in subsection 1.

Chapter 115, Laws of 1969, substituted "shall be microfilmed and the original destroyed when" for "after the expiration of five (5) years after the date" in subsection (6).

Chapter 207, Laws of 1969, added the second sentence to subsection (3) (d).

The 1971 amendment substituted "unneeded records and files" for "records and files which shall have ceased to be of any value" in the second sentence of subsection 6; and substituted "records and files which have ceased to be of any value" at the end of the subsection 6 for "all correspondence, motor card and application card records after the expiration of five (5) years from the date thereof, and all conditional sales contracts and chattel mortgages and records pertaining thereto shall be microfilmed and the original destroyed when the same have ceased to be liens on the motor vehicles described therein."

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

Registrar's position abolished and functions transferred, sec. 82A-1205(1).

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-102. (1755.1) Penalty for violations—enforcement of provisions. The violation of any of the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108, 53-109, 53-114, 53-115, 53-116, 53-117, 53-119, 53-120 and 53-121, shall constitute a misdemeanor and shall be punishable by a fine of not exceeding twenty-five dollars (\$25.00).

Nothing herein contained shall prevent the prosecution of a person for an offense committed under any other law.

It is hereby made mandatory upon all police and peace officers of the state, of the counties of the state, and of towns, cities and villages to carry out the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108 and 53-109, and sections 53-114 to 53-121.

History: En. Sec. 2, Ch. 158, L. 1931; Amendment

amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965. The 1965 amendment deleted section 53-118 from the list of sections in the first sentence of the first paragraph.

53-106. (1757) Number plates. (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER," one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be issued every other year, provided that number plates will next be issued in the year 1973 and in alternate years thereafter, shall bear a distinctive marking, and shall be furnished by the state. In alternate years the registrar shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(2) In the case of motor cars, number plates shall be of metal six inches wide and twelve inches in length, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the registrar. An additional fee of fifty (50) cents per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each

series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a dash or a dot unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be replaced by the registrar of motor vehicles at such time when the physical condition of numbered plates require same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers, and house trailers, and the letters "MC" or the word "CYCLE" for plates assigned to vehicles of the motorcycle type.

Number plates issued to a passenger car, truck, trailer or vehicle of the motorcycle type may be transferred only to a replacement passenger car, truck, trailer or motorcycle type vehicle.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new

counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57.

History: En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R. C. M. 1921; amd. Sec. 2, Ch. 158, L. 1933; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967; amd. Sec. 5, Ch. 127, L. 1969; amd. Sec. 1, Ch. 226, L. 1971.

Amendments

The 1965 amendment substituted the second, third, and fourth sentences of subsection (2) for "Such registration plate and the required serial numbers and letters thereon, shall be of sufficient size and spacing to be plainly readable from a distance of 100 feet during daylight. The registrar shall, in his discretion, choose to select permanent number or identification plates with a yearly insert plate or tab bearing the last two numbers of the year for which such license is issued and such insert plate or tab shall be serially numbered in the same manner as the numbered plates, and such permanent number or identification plates shall be made in such form and of such materials as the registrar shall determine; provided further, that the registrar may, in his discretion, designate number or identification plates for any year as the proper means of identifying the vehicle for a subsequent year or years, said plates to be validated by a windshield sticker of such size, color and design and displayed as he shall direct; such sticker shall bear a distinctive number and the registration period for which it is issued, after which period it shall be unlawful to further display same on the vehicle."

The 1967 amendment substituted "issued every other year" for "renewed annually," and deleted "each year" after

"marking" in the third sentence of subsection (1); added the fourth sentence of subsection (1); deleted "and the required serial numbers and letters thereon" after "registration plate" and "or numerals and border" after "material" in the second sentence of subsection (2); substituted "motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar" for "general fund of the state of Montana" in the third sentence of subsection (2); and added "and housetrailer" after "trailers" at the end of the first sentence of subsection (4).

The 1969 amendment added the second paragraph in subsection (4).

The 1971 amendment inserted in the second sentence of subsection (1) the provision for distinctive letters for plates issued to dealers in vehicles of the motorcycle type; inserted "provided that number plates will next be issued in the year 1973 and in alternate years thereafter" in the third sentence of subsection (1); added at the end of the first paragraph of subsection (4) the provision for distinctive letters for plates assigned to vehicles of the motorcycle type; inserted references to vehicles of the motorcycle type in two places in the second paragraph of subsection (4); and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 41, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 16, 1967.

Cross-References

Warden to continue to provide license plates, sec. 82A-1205(1).

53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles. Any owner of a motor vehicle manufactured more than thirty (30) years prior to the year 1963, solely as a collectors' item and not for general transportation purposes may file with the registrar of motor vehicles an application for the registration of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer author-

ized to administer oaths. The registration fee for all such motor vehicles weighing twenty-eight hundred and fifty (2850) pounds or less shall be five dollars (\$5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars (\$10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application and register the motor vehicle therein described in the manner specified in section 53-101, and shall deliver to the applicant two (2) license plates bearing the inscription, "Pioneer—Montana" and the registration number, but the year of issuance shall not be shown thereon. No annual renewal of the registration of any such motor vehicle shall be required, and the same shall be valid as long as the vehicle is in existence; provided, however, that upon any sale of such motor vehicle, the purchaser shall be required to renew the registration thereof and pay the license fees hereinbefore specified.

History: En. 53-106.1 by Sec. 1, Ch. 123, L. 1955; amd. Sec. 1, Ch. 86, L. 1963.

Amendment

The 1963 amendment substituted "thirty

(30) years prior to the year 1963" in the first part of the first paragraph for "thirty (30) years prior to the date of the application referred to hereunder."

53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license. The lettered license plates, as herein provided, are to replace the regular license plates on the motor vehicle owned by said amateur radio licensee for such period of time as the amateur radio license is in force under the federal communications commission and the special license issued hereunder is in force, but no longer. Whenever such official amateur radio license is revoked or expires for whatever reason, such license plate shall be removed immediately by the owner of the motor vehicle and the regular plates again placed or mounted on the motor vehicle as in other cases. When the motor vehicle is sold or otherwise transferred, the owner and holder of valid official amateur radio station and operator's license shall have the right to transfer the lettered plates to another motor vehicle owned by him upon such reasonable conditions as may be prescribed by the registrar. On the revocation or expiration of the amateur radio station and operator's licenses, the lettered license plates as issued shall be returned and surrendered to the registrar of motor vehicles.

History: En. Sec. 5, Ch. 2, L. 1957; amd. Sec. 4, Ch. 62, L. 1959; amd. Sec. 6, Ch. 127, L. 1969.

Amendments

The 1969 amendment deleted a requirement that "the regular number plates shall be mounted on the motor vehicle" upon the transfer or sale of a motor vehicle.

53-106.7. Distinctive plates for national guardsmen. In addition to the regular license plates prescribed by law, there may be issued to each active member of the Montana national guard, distinctive license plates, bearing the words "national guard" and "Montana," said plates to be numbered in sets of two with a different number following the letters

"NG." Plates shall be furnished by the registrar of motor vehicles to the adjutant general, and by him, issued to the members of the active guard. The adjutant general shall inform the said registrar of each set so issued, giving the number of the license, the name, unit and home address of the member to whom issued, and shall be responsible for the recovery of said plates and notification to the registrar upon the member becoming ineligible to use them. Plates so issued shall be placed or mounted on the vehicle over the regular license plate, and shall be removed upon sale or other disposition of the vehicle. Said distinctive plates shall be renewed every five (5) years or when lost, destroyed or damaged.

History: En. Sec. 1, Ch. 135, L. 1965; Amendments
amd. Sec. 1, Ch. 114, L. 1967.

Title of Act

An act to provide for distinctive license plates for motor vehicles owned by active members of the Montana national guard.

The 1967 amendment substituted "every five (5) years or when lost, destroyed or damaged" for "concurrently with the issuance of the regular motor vehicle license plates" at the end of this section.

53-106.8. Free license plates to disabled veterans. Any person who is a veteran of the armed service of the United States and permanently and totally disabled because of an injury which has been determined by the veterans administration to be service connected, and who is a citizen and resident of the state of Montana, and who is the owner of an automobile, shall be provided with free license plates upon payment of personal property tax equal to one per cent (1%) of the taxable value for the automobile upon proof of permanent and total service connected disability.

History: En. Sec. 1, Ch. 215, L. 1971. of the armed forces of the United States
whose disability is service connected.

Title of Act

An act to provide free license plates to permanently and totally disabled veterans

53-106.9. Nontransferability of disabled veterans' free license plates. The license issued pursuant to this act shall not be transferable.

History: En. Sec. 2, Ch. 215, L. 1971.

53-106.10. Veterans' free plates limited to one automobile. No disabled veteran shall be entitled to free license plates for more than one automobile.

History: En. Sec. 3, Ch. 215, L. 1971.

53-106.11. Violations of act or wrongfully attempting to secure veterans' free plates a misdemeanor—penalties. Any person who violates this act or who knowingly and wrongfully attempts to secure free license plates under this act shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100) or imprisonment for not more than thirty (30) days or both.

History: En. Sec. 4, Ch. 215, L. 1971.

53-107. (1758) Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand. Upon completion of the application for registration, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two (2) copies of the application marked "Owner's Certificate of Registration and Tax Receipt," one (1) of which shall be marked "File copy," and forward one (1) copy of the application to the registrar of motor vehicles who shall cause to be entered the information contained in said application upon the corresponding records of his office and shall furnish the applicant a certificate of ownership subject to the provisions of section 53-110. Said certificate of registration and ownership shall meet the following requirements:

The certificate of registration and the certificate of ownership shall each contain upon the face thereof: (1) the date issued, (2) the registration number assigned to the owner and the vehicle, (3) the name and complete address of the owner and the name and complete address of any conditional sales vendor, and also the name and address of any other lienor as shown by said application, (4) a description of the registered vehicle including the year built and serial number, if any, (5) any lien against such motor vehicle and the amount due at the date of registration, and such other statement of facts as may be determined by the registrar.

Upon receipt of the application the registrar shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the registrar of motor vehicles.

The certificate of ownership shall contain a form of notice to the registrar of a transfer of title or interest of the owner and such other statement on forms as may be determined by the registrar.

File copy of owner's certificate of registration receipt to be signed, carried, and exhibited on demand. Every owner, upon receiving a registration receipt shall write his signature thereon with pen and ink in the space provided. Every such registration receipt or a notarized photostatic copy thereof or a duplicate thereof furnished by the registrar of motor vehicles shall at all times be carried in the vehicle, to which it refers or shall be carried by the person driving or in control of such vehicle, who shall display the same upon demand of a police officer or any officer or employee of the registrar of motor vehicles or the highway department.

The term "motor vehicle" includes automobile, truck, motorcycle-type vehicle, and semitrailer, trailer and trailer-house.

Any trailer, semitrailer or trailer-house which does not have a manufacturer's or other identifying number thereon shall be assigned an identification number by the registrar upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor

vehicle shall stamp such number so assigned by the registrar upon the principal right frame member of said motor vehicle near the front end thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the registrar. The registrar may withhold registration until satisfactory proof by affidavit, of such stamping is filed with him.

Any person violating this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding twenty-five dollars (\$25.00).

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R. C. M. 1921; amd. Sec. 2, Ch. 159, L. 1933; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971.

Amendments

The 1969 amendment deleted exceptions relating to the owners of passenger cars, pickups and farm trucks in the fifth paragraph of the section.

The 1971 amendment deleted "in quintuplet" after "application for registration" near the beginning of the section; substituted "subject to the provisions of section 53-110" at the end of the first sentence of the first paragraph for "and said owner shall at all times retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorse-

ment or cancellation. In the event the said certificate of ownership be in the possession or under the control of any person other than the person entitled to operate and possess the motor vehicle the same must be surrendered to the person entitled to operate and possess such motor vehicle, upon demand, and refusal shall constitute a misdemeanor. At the same time, he shall issue to any conditional sales vendor, or other person holding the legal title to the vehicle, or any mortgagee thereof, or any other lien holder, a statement of the filing of such conditional sales contract, mortgage or other lien"; deleted "The reverse side of" at the beginning of the fourth paragraph; substituted "motorcycle-type vehicle" for "motorcycle" in the sixth paragraph; and made minor changes in style.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-108. (1758.1) Renewal of registration. Every vehicle registration under this act shall expire on December thirty-first of each year and shall be renewed annually upon application and payment of license fees, as provided in sections 53-114 and 53-122, such renewal to take effect on the first day of January of each year. The certificate of registration issued hereunder shall be valid during the registration year only for which issued, and the certificates of ownership shall remain valid until canceled by the registrar of motor vehicles upon a transfer of any interest shown therein and need not be renewed annually.

The owner of a vehicle registered under the provisions of this act shall be entitled to operate such vehicles between January first and February fifteenth without displaying the registration certificate of the current year, on condition that such owner shall, during said period, display upon such vehicle the number plates or plate assigned thereto for the previous year.

History: En. Subd. 2, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965; amd. Sec. 1, Ch. 116, L. 1969;

amd. Sec. 8, Ch. 127, L. 1969; amd. Sec. 1, Ch. 138, L. 1971; amd. Sec. 2, Ch. 214, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 138 and once by Ch. 214.

Neither amendatory act mentioned nor incorporated the changes made by the other. Since the two amendatory acts do not appear to conflict, the compiler has made a composite section incorporating the changes made by both.

Amendments

The 1965 amendment increased the fee for temporary windshield stickers provided for by the former third paragraph from \$1.00 to \$2.00; and substituted "registrar of motor vehicles" for "board" in two places in the same paragraph.

Chapter 116, Laws of 1969, deleted language restricting the application of the former third paragraph to purchasers from licensed dealers; and extended the life of the temporary windshield stickers from 30 days to 60 days.

Chapter 127, Laws of 1969, deleted from the former third paragraph language requiring display of the previous year's number plates with the temporary wind-

shield sticker; extended the grace period for application for registration from three days to ten days; and made the grace period applicable to used as well as new vehicles.

Chapter 138, Laws of 1971, deleted the former third paragraph providing for temporary windshield stickers.

Chapter 214, Laws of 1971, deleted from the first paragraph a final sentence reading "Upon annual renewal, whenever the legal owner of the vehicle is other than the registered owner, the registrar of motor vehicles shall immediately notify such legal owner by mail of the registration number assigned to such vehicle for the ensuing year"; and made minor changes in punctuation and style.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 241 M 155, 382 P 2d 174.

53-109. (1758.2) Transfer of title or interest. (a) * * * [Same as parent volume.]

(b) Within ten (10) days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under section 53-107, to the county treasurer, who shall forward the same to the registrar and no certificate of ownership and certificate of registration shall be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. Failure to make such application within the time provided herein shall subject the transferee to a penalty of ten dollars (\$10) plus one dollar (\$1) for each additional day in which said vehicle remains unregistered, not to exceed twenty-five dollars (\$25), said penalty to be collected by the county treasurer at the time of registration, and in addition to the fees otherwise provided by law.

(c) In the event of a transfer by operation of law of any title or interest of an owner of the legal title or owner in and to a motor vehicle as upon inheritance, devise or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is so transferred, the executor, administrator, receiver, trustee, sheriff or other representative or successor in interest of the person whose title or interest is so transferred shall forward to the registrar of motor vehicles an application for registration in the form required for an original application for registration, together with a verified or certified statement of the transfer of such title or interest which statement shall set forth the reason for such involuntary transfer, the title or interest so transferred, the name or names of the person or persons to whom such title or interest is to be transferred, the process of procedure effecting such transfer and such other information as may be requested by the registrar and with such statement shall be

furnished such evidence and instruments as may otherwise be required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases, and in the event the registrar shall be satisfied that such transfer is regular and that all formalities as required by law have been complied with, he shall cause to be sent to the owner, conditional sales vendors, lessors, mortgagees and other lienors, as shown by his records notice of such intended transfer and thereafter, but not less than five (5) days thereafter, shall register such motor vehicle and shall issue a new certificate of ownership and certificate of registration to the person or persons entitled thereto. The notice herein required shall be deemed complied with by deposit in the post office in Deer Lodge, Montana, such notice postage prepaid, addressed to such person or persons at the respective addresses shown on his records.

When the vehicle title that is involuntarily transferred is not registered in this state the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration, but the registrar need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

In the event of the death of an owner of one or more motor vehicles and/or trailer, and/or semitrailer, and/or trailer-house registered hereunder and not exceeding the value of four thousand dollars (\$4,000), without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving husband or wife, or other heir, unless such property is by will otherwise bequeathed, may secure transfer of the certificate of ownership and the certificate of registration of the deceased, in and to such motor vehicle in the name of the surviving husband or wife or other heir, as above mentioned, upon filing with the registrar an affidavit of such person setting forth the fact of survivorship and the name and address of any other heirs and such other facts as are hereby made necessary to entitle the affiant to a transfer and thereupon the registrar is authorized to make such transfer of the certificate of ownership and certificate of registration, subject to all contracts, leases, mortgages, or other liens as shown by his records.

Nothing in the foregoing subdivision of this section shall prevent any conditional sales vendor, mortgagee, or other lienor from assigning his interest or title in or to a motor vehicle registered under the provisions of this act to any other person without the consent of and without effecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any conditional sales vendor, mortgagee, or other lienor assigning his interest in any motor vehicle registered under this act a copy of such assignment must be filed with the registrar and record thereof made upon his records.

(d) Every person who transfers any motor vehicle to a junk dealer for the purpose of scrapping said vehicle shall so notify the registrar and deliver the certificate of ownership and certificate of registration to the registrar for cancellation.

History: En. Subd. 3, Sec. 2, Ch. 159, 2, Ch. 63, L. 1945; amd. Sec. 1, Ch. 191, L. 1933; amd. Sec. 6, Ch. 72, L. 1937; L. 1967; amd. Sec. 1, Ch. 213, L. 1969; amd. Sec. 2, Ch. 148, L. 1943; amd. Sec. amd. Sec. 2, Ch. 138, L. 1971.

Amendments

The 1967 amendment deleted "registered under the provisions of this act" after "motor vehicle" near the beginning of the first paragraph of former subsection (e), now subsection (c); and inserted the present second paragraph in former subsection (e), now subsection (c).

The 1969 amendment increased the maximum value specified in the third paragraph of former subsection (e), now subsection (c), from \$1,000 to \$4,000.

The 1971 amendment substituted "county treasurer, who shall forward the same to the registrar" in the first sentence of subsection (b) for "registrar, who shall file the same upon receipt thereof"; added the second sentence to subsection (b); deleted former subsections (c) and (d); and redesignated former subsections (e) and (f) as (c) and (d), respectively.

DECISIONS UNDER FORMER LAW

Incomplete Transfer

Chattel mortgages given for the purchase of an automobile were without consideration where vendor failed to obtain certificates of registration and ownership from the registrar of motor vehicles which were necessary to pass title to the buyer. *Sonnek v. Universal C.I.T. Credit Corp.*, 140 M 503, 374 P 2d 105, 108, explained in 142 M 155, 382 P 2d 174.

Where neither buyer nor auto dealer made any attempt to comply with this section, there was no transfer of ownership of damaged auto even though it had been in the possession of buyer for several days after the agreement to buy, and dealer's insurer, not buyer's, was primarily liable for damages to the auto. *Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co.*, 142 M 155, 382 P 2d 174, distinguished in 227 F Supp 978, 981.

Where there were three transfers or attempted transfers of automobile, the last one to insured, without complying with this section, but buyer had paid the entire agreed price, possessed and repaired it, held the certificate of registration, secured state licenses for it, paid additional premiums for a separate policy, and had enjoyed undisputed dominion and control over the car for a period of nearly three years prior to accident, the car is not a "non-owned automobile" under liability policy for buyer extending coverage to operation of nonowned automobiles by insured or any relative. To hold otherwise would do violence to the intention of parties, traditional concepts of ownership, and the sense of right and wrong. *National Farmers Union Property & Casualty Co. v. Colbrese*, 368 F 2d 405, reversing 227 F Supp 978, certiorari denied 386 US 991, 87 S Ct 1306.

Where automobile seller kept certificates of ownership and registration pending payment by buyer of two installments due under note given for automobile, there was no completed sale and thus dealer and its insurer were liable for injury sustained by passenger in automobile while driven by buyer. *Ostermiller v. Parker*, 152 M 337, 451 P 2d 515.

In personal injury action involving an automobile which had been sold by used car dealer without properly transferring title in accordance with former subsection (d) of this section, title remained in dealer and his garage insurance policy covered such automobile since subsection (d) applied to subsections (a), (b), and (c) in so far as party to transfer fails to follow law provided therein. *Irion v. Glen Falls Ins. Co.*, 154 M 156, 461 P 2d 199.

Noncompliance as Affecting Insurance Coverage

Since only effect of the statute is that legal title to automobile cannot pass to voluntary transferee in absence of compliance, automobile paid for and possessed by insured was owned within meaning of insurance policy; despite insurance company's contention that since insured had failed to comply with statute he did not hold legal title to automobile and hence was not "owner" for purpose of coverage. *National Farmers Union Property & Casualty Co. v. Colbrese*, 368 F 2d 405, certiorari denied 386 US 991, 87 S Ct 1306.

References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

53-109.1. Used motor vehicles—transfer to and from dealers. The provisions of subdivision (b) of section 53-109 shall not apply in the event of the transfer of a motor vehicle to a duly licensed automobile dealer intending to resell such vehicle and who operates the same only

for demonstration purposes. In such cases, the dealer shall not be required to make application for a new certificate of ownership or for registration during the period of his ownership of said vehicle, but upon his transfer of ownership thereof to a person other than a licensed motor vehicle dealer, the following acts shall be required of the dealer on or before the times herein set forth:

(1) Prior to his delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of said vehicle a sticker in form to be prescribed by the registrar, and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number. There shall be imprinted upon said sticker in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER." One copy of said sticker shall be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2) hereof, and a copy shall be retained by the dealer for his file.

(2) Within three (3) days following the date of delivery of said vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides, the certificate of ownership and certificate of registration (if the same are then in his possession), with an application for registration executed by the new owner in accordance with the provisions of section 53-107, and a copy of the sticker affixed to said vehicle by the dealer, and the registrar, upon receipt of said documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien as provided in said section 53-107. Transmission of said documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first class mail, in which event they shall be deemed to have been delivered at the time of mailing.

(3) If the dealer is unable to forward the certificate of ownership and/or certificate of registration within the time set forth in subsection (2) hereof, because the same are lost, are in the possession of third parties, or are in process of reissuance in this state or elsewhere, he shall comply in all other respects with the provisions of said subdivision (2) and shall forward the missing document or documents to the county treasurer, either personally or by first class mail, within three (3) days after their receipt.

Upon compliance by the dealer with the requirements set forth in this section, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of the delivery of said vehicle to him by the dealer, and the dealer shall have no further liability or responsibility with respect to the processing of registration.

History: En. Sec. 3, Ch. 138, L. 1971.

Title of Act

An act to provide for the issuance by licensed motor vehicle dealers of stickers to be affixed to the rear window of new

and used vehicles purchased from such dealers, to remain thereon during the ten day grace period for making application for registration of such vehicle; providing a nonregistration penalty; requiring that

in cases of sales of used motor vehicles to persons other than licensed dealers, the dealer forward to the county treasurer, either personally or by first class mail, within three days following delivery of the vehicle, the certificate of ownership and certificate of registration with an application for registration executed by the new owner, and a copy of the sticker affixed to said vehicle by the dealer; pro-

viding that in such cases and upon compliance by the dealer with such requirements, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of delivery of said vehicle; amending sections 53-108, 53-109, 53-146, and 53-147, Revised Codes of Montana, 1947; and repealing all acts and parts of acts in conflict herewith.

53-109.2. Applicability of sticker provisions to new car purchases. The provisions of section 3 [53-109.1], subsection (1), pertaining to the issuance of a sticker by the dealer, placement thereof upon the rear windshield of the vehicle prior to delivery, and transmission of a copy of said sticker to the county treasurer, either personally or by first class mail within ten (10) days following delivery of said vehicle, shall be applicable to sales of new motor vehicles as well as to sales of used motor vehicles.

History: En. Sec. 4, Ch. 138, L. 1971.

53-109.3. Temporary windshield sticker. Any purchaser of a motor vehicle who is unable to obtain license plates from the county treasurer at the time he makes application for registration or reregistration of said vehicle, because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere, may, upon making affidavit to that effect upon a form prescribed by the registrar and upon the payment of a fee of two dollars (\$2) to be collected by the county treasurer and remitted to the registrar, obtain from the county treasurer of the county in which said vehicle is subject to tax, a temporary windshield sticker of such size, color and design as the registrar may prescribe, to be validated by the county treasurer for a period of sixty (60) days from the date of issuance, and such purchaser, upon displaying such sticker on the lower right-hand corner of the windshield of such motor vehicle shall be entitled to operate such vehicle during the period for which such windshield sticker has been validated without displaying the registration certificate or number plates or plate for the current year. Provided, however, the county treasurer shall not sell, and no person shall purchase, more than one (1) sixty (60) day temporary windshield sticker for any vehicle, the ownership of which has not changed since the issuance of the previous sixty (60) day windshield sticker.

History: En. Sec. 5, Ch. 138, L. 1971.

53-109.4. Grace period—penalty. Any purchaser of a new or used motor vehicle from a duly licensed motor vehicle dealer shall have the grace period of ten (10) days from the date of purchase to make application for registration and to obtain registration plates, and it shall not be a violation of this chapter or any other law for such purchaser to operate such vehicle upon the streets and highways of this state without a certificate or registration and registration plates during the said ten (10) day period; provided that at all times during said period the sticker

issued by the dealer at the time of purchase shall remain affixed to said vehicle as provided in section 3 [53-109.1]. Failure to make such application within the time provided herein shall subject the purchaser to a penalty of ten dollars (\$10), plus one dollar (\$1) for each additional day in which said vehicle remains unregistered, not to exceed twenty-five dollars (\$25), said penalty to be collected by the county treasurer at the time of registration, and in addition to the fees otherwise provided by law.

History: En. Sec. 8, Ch. 138, L. 1971.

Repealing Clause

Section 9 of Ch. 138, Laws 1971 repealed all acts and parts of acts in conflict therewith.

53-110. (1758.3) Filing of liens, rights, procedure, fees. (a). * * *
[Same as parent volume.]

(b) Satisfaction or statements of release filed with the registrar of motor vehicles under this act shall be retained by him for a period of eight (8) years after receipt, after which they may be destroyed. Chattel mortgages, conditional sales contracts, leases, or other liens filed with the registrar, and all renewals and assignments thereof, shall be retained by him for a period of eight (8) years after the maturity date stated in such mortgage, conditional sales contract, lease, or other lien, or renewal, or if no maturity date is therein stated, for a period of thirteen (13) years after receipt, after which they may be destroyed.

(c) From and after the filing of any mortgage, conditional sales contract, lease, or other lien, or copy thereof on any motor vehicle, as herein provided, then and in that event such mortgage, conditional sales contract, lease or other lien shall be constructive notice of the said mortgage, conditional sales contract, lease or other lien and its contents to subsequent purchasers and encumbrancers.

(d) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle the mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available upon delivery to the sheriff of the original instrument or a copy certified by the registrar of motor vehicles and such undertaking as may be required by the sheriff. In case of attachment of motor vehicles all the provisions of section 93-4338 shall be applicable except that deposits must be made with the registrar of motor vehicles.

(e) In the event any conditional sales vendor or assignee or chattel mortgagee or assignee fails to file a satisfaction of a chattel mortgage, assignment or conditional sales contract within fifteen days after receiving final payment on such mortgage, assignment, or conditional sales contract he shall be required to pay the registrar of motor vehicles the sum of one dollar (\$1.00) for each and every day thereafter that he fails to file such satisfaction.

(f) and (g). * * * [Same as parent volume.]

(h) A fee of two dollars (\$2.00) shall be paid to the registrar of motor vehicles upon and for filing any lien or lien instrument against

any motor vehicle, and said fee of two dollars (\$2.00) shall further include and cover the cost of filing a satisfaction or release of the lien or lien instrument, and, also, the cost of endorsing such satisfaction or release on the face of the certificate of ownership or on the records of the registrar, or both. A fee of two dollars (\$2.00) shall be paid the registrar of motor vehicles for issuing a certified copy of a chattel mortgage, conditional sales contract or other lien, or instrument of encumbrance on file in the office of the registrar, or for filing any assignment of any instrument on file with the registrar. All fees provided for in this section shall be deposited by the registrar in the earmarked revenue fund.

History: En. Subd. 4, Sec. 2, Ch. 159, L. 1933; amd. Sec. 7, Ch. 72, L. 1937; amd. Sec. 3, Ch. 148, L. 1943; amd. Sec. 3, Ch. 63, L. 1945; amd. Sec. 11-143, Ch. 264, L. 1963; amd. Sec. 26, Ch. 121, L. 1965.

Amendments

The 1963 amendment completely rewrote subsection (b), for previous text of which see parent volume; inserted "or conditional sales contract" near the beginning of subsection (d); substituted "mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available" in subsection (d) for "mortgagee may foreclose his mortgage as in the case of other personal property, and upon default under a conditional sales contract covering a motor vehicle the vendor shall have the remedies prescribed by section 74-207"; substituted the reference to section 93-4338 in the latter part of subsection (d) for a reference to section 52-

309; deleted the words "instead of the county treasurer" from the end of subsection (d); and made minor changes in phraseology and punctuation in subsection (d).

The 1965 amendment deleted from the end of subsection (e) a sentence reading "All moneys paid to the registrar of motor vehicles under this section shall revert to the automobile theft fund"; increased the fees in subsection (h) for filing liens and releases from \$1.00 to \$2.00, for certified copies from 50¢ to \$2.00, and for filing assignments from 50¢ to \$2.00; and added the last sentence to subsection (h).

Notice of Prior Interest

Where auto repairman failed to ascertain true ownership of auto before making repairs, the filing of conditional sales contract with the registrar of motor vehicles by assignee prior to repairman's lien established a dominant interest under subsection (c) of this section. *Williamson v. Skerritt*, 141 M 422, 378 P 2d 215.

53-112. (1758.4) Fee for original certificate of ownership and transfer of title. A charge of two dollars (\$2.00) shall be made for issuance of an original certificate of ownership of title and for a transfer of registration which shall be collected by the county treasurer. The fees shall be distributed as follows:

(a) One dollar (\$1.00) of each fee shall be remitted to the registrar of motor vehicles by the county treasurer with each application for original certificate of ownership or transfer of registration.

(b) Prior to March 1, 1966 and each March thereafter, the county commissioners of each county shall divide the fees retained by the county to

(i) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town, and

(ii) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns.

History: En. Subd. 5, Sec. 2, Ch. 159, L. 1933; amd. Sec. 8, Ch. 72, L. 1937; amd. Sec. 27, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified in the first sentence from \$1.00

to \$2.00; inserted "and for a transfer of registration" in the first sentence; deleted "for the registrar of motor vehicles the first time any vehicle is registered by any owner" from the end of the first sentence; and substituted the second sentence and paragraphs (a) and (b), including subparagraphs (i) and (ii), for sentences reading, "Said charge of one

dollar (\$1.00) shall be remitted to the registrar of motor vehicles by the county treasurer with each application for registration. Upon a transfer of registration by the owner, there shall be forwarded to the registrar of motor vehicles, the certificate of ownership or title and registration card, properly filled out and executed, together with a transfer fee of one dollar (\$1.00)."

53-113. (1758.5) Lost certificates. In the event any certificate of registration or ownership shall be lost, mutilated or become illegible, the person to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon furnishing satisfactory information to the registrar of such facts and upon payment of a fee of two dollars (\$2.00).

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified at the end of the section from \$1.00 to \$2.00.

53-114. (1759) Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed, in the office of the county treasurer wherein such motor vehicle is owned or taxable, an application for registration, or reregistration, upon blank form to be prepared and furnished by the registrar of motor vehicles, which application shall contain:

(a) and (b). * * * [Same as parent volume.]

(c) Description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body and, if truck, the rated capacity.

(d) and (e). * * * [Same as parent volume.]

(2) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M., 1947, shall before filing such application with the county treasurer submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

(3) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R.C.M., 1947, shall upon the filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed or the new motor vehicle sales tax against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or reregistration may be accepted by the county treasurer. The county treasurer is hereby

empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or reregistration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on said motor vehicle, except a mobile home as defined in section 84-101, R. C. M., 1947, shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration and such determination shall be entered on the application form in a space provided therefor.

(5) Motor vehicles, except mobile homes as defined in section 84-101, R.C.M., 1947, are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be subject to assessment, levy and taxation more than once in each year.

(6) The applicant for original registration of any wholly new and unused motor vehicle except a mobile home as defined in section 84-101, R.C.M., 1947, acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 32-3315, R.C.M., 1947, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1 in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "taxes on this vehicle due January 1 of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R. C. M. 1921; amd. by repeal Subd. 4, Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971.

Amendments

The 1963 amendment deleted the words "except as hereinafter provided" which followed "Motor vehicles" at the beginning of subsection (5); deleted from the end of subsection (5) a proviso reading, "and provided, further, that new motor vehicles, and used motor vehicles which have not previously been assessed and licensed during the current year, when held for sale in the stock of any duly licensed motor vehicle dealer or used motor

vehicle dealer, are hereby declared to be merchandise and shall be assessed as of the first Monday in March in each year in the same manner as other stocks of merchandise"; and deleted from the end of the second paragraph of subsection (7) a clause reading, "and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise of a licensed dealer, the county treasurer shall indicate such fact by proper entry on said application, and the applicant for registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise."

Chapter 290, Laws of 1967, inserted "or the new motor vehicle sales tax" after "taxes assessed" in the first sentence of subdivision (3).

Chapter 296, Laws of 1967, in subsection (2), added "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" at the beginning of the subsection and deleted "the applicant shall" before "submit the same"; in subsection (3), substituted "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" for "The applicant shall" before "upon the filing of" at the beginning of the subsection; in subsection (4), inserted "except a mobile home as defined

in section 84-101, R. C. M. 1947" after "said motor vehicle"; in subsection (5), inserted "except mobile homes as defined in section 84-101, R. C. M. 1947" after "Mobile vehicles" near the beginning of the subsection; in subsection (6), inserted "except a mobile home as defined in section 84-101, R. C. M. 1947" after "unused motor vehicle" and substituted "section 32-3315, R. C. M. 1947" for "section 53-617" after "tax provided by."

The 1971 amendment deleted "executed in quintuplet" near the end of the preliminary paragraph of subsection (1); substituted "engine or serial number" for "engine and serial number" in subdivision (1)(c); and made minor changes in punctuation and style.

Separability Clause

Section 10 of Ch. 296, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-115. (1759.1) **Time for making application.** Registration must be renewed annually and license fees paid annually. All registrations expire on December 31 of the year in which they are issued and application for registration, or reregistration, must be filed with the county treasurer as aforesaid not later than February 15 of each year. Provided, however, that in the event of transfer of a motor vehicle during the registration year, such motor vehicle shall be reregistered and relicensed as provided by statute.

History: En. Subd. 2, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 51, L. 1967; amd. Sec. 9, Ch. 127, L. 1969.

Amendments

The 1967 amendment changed the late date for registration or reregistration from February 1 to February 15.

The 1969 amendment added the proviso.

53-117. (1759.3) **Disposition of taxes.** The county treasurer shall credit all taxes on motor vehicles so collected to a motor vehicle suspense fund and, at some time between March 1 and March 10 of each year, and every sixty (60) days thereafter, the county treasurer shall distribute the same in relative proportions required by the levies for state, county, school district and municipal purposes in the same manner as other personal property taxes are distributed.

History: En. Subd. 4, Sec. 1, Ch. 158, L. 1933; amd. Sec. 4, Ch. 72, L. 1937; amd. Sec. 1, Ch. 154, L. 1943; amd. Sec. 1, Ch. 200, L. 1945; amd. Sec. 29, Ch. 121, L. 1965.

Amendment

The 1965 amendment deleted from the end of the section sentences reading, "All motor vehicle license fees collected by the county treasurer shall be credited to the motor vehicle license fund hereby established. The cost of making and delivering license plates and identification marks, certificates, and all other expense of operating the motor vehicle department of the state of Montana, shall be paid out of the motor vehicle recording fund (sometimes

called the motor vehicle administrative fund); provided, however that each county shall receive its pro rata share of any license fees, except dealer license fees, paid to the registrar of motor vehicles. The remainder in said county motor vehicle license fund shall be transferred by the county treasurer at the end of each month to the road fund of said county and shall be used by the county for the purpose set forth in section 53-122."

53-118. (1759.4) Application for dealer's license. Every person, firm, corporation, or association who, for commission or profit, engages in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, used motor vehicles, trailers, (except trailers having an unladen weight of less than five hundred (500) pounds, semitrailers or special mobile equipment as defined in section 53-642 and qualifies under subparagraph (f) of this section, shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for licensing as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required. The application and all of the information therein contained shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter named. Dealer's license must be renewed and paid for annually, and an application for relicensing must be filed not later than January first of each year. To qualify for licensing and the issuance and use of "D," "UD," "DTR," or "MCD" plates, as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

- (a) The name under which the business is conducted;
- (b) Location of premises (street, address, city, county and state) where records are kept, sales are made and stock of motor vehicles displayed;
- (c) Name and address of all owners or persons having an interest in the business; provided, however, that in the case of a corporation, the names and addresses of the president and secretary thereof will be sufficient;
- (d) Name and make of all vehicles handled, if factory franchised or selling under a written agreement with a manufacturer, importer or distributor;
- (e) Whether or not used vehicles are handled exclusively;
- (f) A certificate to the effect that the applicant is a bona fide dealer in motor vehicles, trailers, semitrailers or special mobile equipment; and that the applicant if a dealer in new motor vehicles, is recognized by a manufacturer, importer or distributor as a dealer in particular makes of new motor vehicles.
- (g) Other information required by the registrar to efficiently administer this law.

The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of five thousand dollars (\$5,000), and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the registrar of motor vehicles and filed in his office and shall be renewed annually.

The registrar of motor vehicles shall not register or license as a dealer any applicant for the sale of new motor vehicles at retail unless such applicant owns, leases or rents a permanent building wherein he shall conduct his business and who has a dealers' franchise from a manufacturer of motor vehicles. A private residence, tent, or temporary building is not a sufficiently permanent place of business within the meaning of this section. The registrar of motor vehicles shall not register or license any applicant as a dealer in used cars unless such applicant furnishes sufficient evidence to the registrar that he has a building or lot to provide display of merchandise, a sign indicating the firm name and headquarters as the principal place of business.

Upon making such application, the applicant shall pay to the registrar of motor vehicles, in addition to the fees required of dealers under the provisions of section 53-122, a fee of five dollars (\$5). Upon receipt of the application, fee and bond, as provided above, the registrar of motor vehicles shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the registrar of motor vehicles is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this act, he may thereupon issue the same.

Every dealer licensed under this section shall keep a book or record of the purchase, sale or exchange or receipt for the purpose of sale, of any used vehicle, a description of such vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such vehicle was purchased or received, or to whom it was sold or delivered, as the case may be. Such description in the case of motor vehicles shall also include the engine number, if any, the maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon, and shall include a statement that a number has been obliterated, defaced or changed, if such is the fact. In the case of a trailer, semitrailer or special mobile equipment, the record shall include the manufacturer's number and such other numbers or identification marks as may be thereon. He shall also have in his possession a duly assigned certificate of title from the owner of said motor vehicle in accordance with the provisions of another section of this act, from the time when the motor vehicle is delivered to him until it has been disposed of by him.

Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, or trailer, semitrailer, or special mobile equipment dealer, or a dealer of the motorcycle-type vehicle, the registrar of motor vehicles shall assign to such dealer a distinctive serial license number as a dealer and furnish every qualified dealer in motor vehicles with not less than two (2) sets of number plates, and as many more as the fee

the dealer pays entitles the dealer to, which number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer sells new motor vehicles (including trucks and trailers) or new and used motor vehicles (including trucks and trailers); the letters "UD" if the dealer sells used motor vehicles (including trucks and trailers) only; and the letters "DTR" if the dealer sells trailers, semi-trailers or special mobile equipment (new or used) only, and the letters "MCD" if the dealer sells vehicles of the motorcycle type. Only new motor vehicle dealers' license plates bearing the letter "D" shall be assigned if both new and used motor vehicles (including trucks and trailers) are sold, and only one license fee shall be required of any one dealer. The registrar of motor vehicles shall cause to be placed on each set of license plates issued to a dealer, a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer shall follow the prefix of the county, and the number of plates issued the dealer shall follow the prefix of the county and the number of the dealer, the dealer's number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer's number by a dash, as follows: Dealer number 4 in Lewis and Clark County would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2 and 5-4-3. Dealers properly licensed under this section are authorized to use and display, dealer's license plates on any motor vehicle held for sale or used principally in the conduct of the dealer's business in selling or demonstrating motor vehicles. No dealer's license plate shall be used or displayed on vehicles normally used for hire, lease or rental or for purposes not incident to the business of a motor vehicle dealer. If it shall appear to the satisfaction of the registrar of motor vehicles, from information furnished to him by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one permitted above, or is not qualified as a dealer under the requirements of this section, the registrar of motor vehicles may revoke such dealer's license. No person, firm, corporation or association shall, for commission or profit, engage in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, trailers or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than five hundred (500) pounds).

Any person violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than two hundred fifty dollars (\$250) and not more than five hundred dollars (\$500). For the purposes hereof, every sale of a motor vehicle in violation of the provisions of this section shall be deemed a separate offense.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 226 and once by Ch. 244. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to

conflict the compiler has made a composite section incorporating both amendments.

Amendments

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

The 1969 amendment, in the first paragraph, inserted "except trailers * * * pounds" after "trailers" in the first sentence, substituted "Montana highway patrol" for "sheriff of the county in which the business is to be conducted, as designated in subparagraph (b) below" in the second sentence and deleted a third sentence which read "A fee of two dollars (\$2) shall be paid to the sheriff for such verification"; in the second paragraph, substituted "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000.00)" and added "and shall be renewed annually"; in the sixth paragraph inserted the third and fourth sentences,

deleted "exclusively" before "for hire" and inserted "lease or rental" in the sixth sentence, and added "except trailers * * * pounds" at the end of the eighth sentence; and, in the seventh paragraph changed the minimum fine from \$50 to \$250 and the maximum fine from \$300 to \$500.

Chapter 226, Laws of 1971, inserted references to motorcycle dealers and to MCD plates near the end of the paragraph preceding the lettered subdivisions and in two places in the fifth paragraph following the lettered subdivisions, and made minor changes in style.

Chapter 244, Laws of 1971, inserted references to special mobile equipment dealers near the middle of the paragraph preceding the lettered subdivisions, in subdivision (f), in the fourth paragraph following the lettered subdivisions, and in two places in the fifth paragraph following the lettered subdivisions; and made minor changes in style, phraseology, and punctuation.

53-118.1 to 53-118.5. Repealed.

Repeal

Sections 53-118.1 to 53-118.5 (Secs. 1 to 5, Ch. 36, L. 1965), relating to truck

demonstration permits, were repealed by Sec. 6, Ch. 209, Laws 1971.

53-118.6. Demonstration of trucks and trailers authorized—dealer's plate to be used. A new or used truck or trailer dealer licensed under section 53-118 may demonstrate to a prospective purchaser any truck, truck tractor, trailer or semitrailer, owned by or consigned to said dealer, or otherwise controlled by said dealer, by payment of the fees required in this section; provided the vehicle displays the dealer's registration plate or other current Montana registration and the demonstration permit provided in Title 32, chapter 33, R. C. M. 1947, chapter 197, Laws of 1965.

History: En. Sec. 1, Ch. 209, L. 1971.

Title of Act

An act requiring a licensed truck or trailer dealer to secure a demonstration permit for purposes of demonstration

only, affixing the fees and terms of said permits, affixing a penalty and repealing sections 53-118.1, 53-118.2, 53-118.3, 53-118.4 and 53-118.5, R. C. M. 1947, enacted as section 2, Chapter 36, Laws of 1965.

53-118.7. Application for truck demonstration permit—form and contents—number of permits authorized. The licensed dealer shall obtain the demonstration permit upon application to the Montana highway commission and payment of eight dollars (\$8) for each permit and the payment of this fee shall be in lieu of fees required under Title 32, chapter 33. The form of such permits and the application therefor shall be provided by the state highway commission under such rules and regulations as they may prescribe and shall be designed so that the licensed dealer may fill in the necessary information thereon and such permit will be validated by the dating, inserting of name and address of the prospective purchaser, and affixing thereto the signature of said licensed dealer. The

licensed dealer may obtain more than one (1) but not to exceed five (5) demonstration permits with each application.

History: En. Sec. 2, Ch. 209, L. 1971.

53-118.8. Operation under truck demonstration permit—period of permit—rental under permit prohibited. Vehicles displaying said permit may be operated either laden or unladen. Each of the said permits shall expire seven (7) days from and after the date of validation by the licensed dealer.

A demonstration permit shall not be issued to the same prospective purchaser for the demonstration of the same vehicle or vehicles for more than one (1) seven (7) day period.

The vehicle operating with the demonstration permit shall not be leased or rented by the licensed dealer or operated for compensation by the licensed dealer whatsoever.

History: En. Sec. 3, Ch. 209, L. 1971.

53-118.9. Violation of truck demonstration provisions. Violation of any provision of this section shall be deemed a misdemeanor and subject to the provisions of section 32-3316. For the purposes of this section, a licensed dealer shall be considered the owner.

History: En. Sec. 4, Ch. 209, L. 1971.

53-118.10. Disposition of truck demonstration fees. Fees collected under this section shall be disposed of in the manner provided in section 32-3204, R. C. M. 1947.

History: En. Sec. 5, Ch. 209, L. 1971.

Repealing Clause

Section 6 of Ch. 209, Laws 1971 read

"Sections 53-118.1, 53-118.2, 53-118.3, 53-118.4 and 53-118.5, R. C. M. 1947, enacted as in section 2, Chapter 36, Laws of 1965, are hereby repealed."

53-119. (1759.5) Must have license plates. Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state without a license and unless such vehicle shall have been properly registered and shall have the proper number plates conspicuously displayed, one (1) on the front and one (1) on the rear of such vehicle, each securely fastened so as to prevent the same from swinging and unobstructed from plain view, except that trailers and semitrailers shall have but one (1) number plate conspicuously displayed on the rear. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law, except as in this act otherwise provided. No person shall purchase or display on such vehicle any license plate bearing the number assigned to any county as provided in section 53-106, other than the county of his permanent residence at the time of application for registration. Provided, however, that the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application therefor in any county through which said motor vehicle passes in its regular scheduled route, and the license plate so issued bearing the number assigned to said county may be displayed

on said motor vehicle in any other county of the state. It is further provided that it shall be unlawful to use license plates issued to one (1) vehicle on any other vehicle, trailers or semitrailers unless legally transferred as provided by statute, or repainting old license plates to resemble current license plates and any person violating these provisions shall be deemed guilty of a misdemeanor and shall be subject to the penalty as set out in section 53-132.

History: En. Subd. 6, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 154, L. 1937; amd. Sec. 1, Ch. 73, L. 1941; amd. Sec. 10, Ch. 127, L. 1969.

Amendments

The 1969 amendment substituted "registration" for "and issuance of said license

plates" at the end of the third sentence, deleted a statement of the validity of a current year's license plate used on the transfer of ownership of any used motor vehicle in the first proviso, and, in the last sentence, inserted "unless legally transferred as provided by statute" after "semitrailers."

53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue. A vehicle, subject to license under Title 53, may be moved unladen upon the highways of this state from a point within the state to a point of destination, the county treasurer at the point of the origin of the movement, shall issue a special permit therefor in lieu of fees required under sections 53-122 and 53-615, upon application presented to him in such form as shall be provided by the registrar of motor vehicles and upon exhibiting to said county treasurer proof of ownership and evidence that the personal property taxes on such vehicle, if any are due thereon, have been paid and upon payment therefor a fee of five dollars (\$5). Such permit shall not be in lieu of fees and permits required under sections 53-630 through 53-638.

Such permit shall be for the transit of the vehicle only, and the vehicle shall not at the time of such transit, be used for the transportation of any persons, except the driver, or property whatsoever for compensation or otherwise, and shall be for one (1) transit only between the points of origin and destination as set forth in the application and shown on the permit.

For the purpose of this section, a mobile home shall be considered unladen, when all items are removed, except the equipment originally installed by the manufacturer; and personal effects of owners.

Definition of a mobile home—house trailer for the purposes of this section. A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for movement on streets and highways, and exceeds twenty-five (25) feet in length, exclusive of trailer hitch.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965.

Compiler's Notes

Sections 53-615, 53-630, 53-631, and 53-634 through 53-638, referred to in the first paragraph of this section, were repealed by Sec. 12-109, Ch. 197, Laws 1965.

Amendment

The 1965 amendment substituted the first paragraph for a sentence reading, "When any vehicle subject to license is to be moved upon the public highways of this state, from one point to another, the county treasurer may issue a special permit therefor upon application presented to him in such form as shall be approved by

the registrar of motor vehicles and upon payment thereof of a fee of five dollars (\$5.00)"; added "and shown on the permit" at the end of the second paragraph; and added the third and fourth paragraphs.

53-120. (1759.6) Replacing number plates. In the event of loss, mutilation, or destruction of number plates, and/or validation devices, the owner of the registered motor vehicle may obtain from the registrar of motor vehicles, duplicates thereof upon filing sworn declaration showing such fact and payment of a fee of two dollars (\$2.00). In the event of loss, mutilation, or destruction of Pioneer plates, duplicates may be obtained in the same manner upon payment of a fee of five dollars (\$5.00).

History: En. Subd. 7, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 47, L. 1955; amd. Sec. 1, Ch. 86, L. 1969; amd. Sec. 3, Ch. 226, L. 1971.

Amendments

The 1969 amendment added provision for obtaining duplicate Pioneer plates.

The 1971 amendment inserted the reference to validation devices in the first sentence.

53-122. (1760) Registration fees of motor vehicles—registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees. Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

All dealers in motor vehicles, a fee of thirty dollars (\$30.00): which shall entitle such dealer to two (2) sets of number plates, and five dollars (\$5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars (\$2.00) additional fee for each additional set of number plates, as may be applied for;

Dealers in motorcycles, trailers including house trailers, thirty dollars (\$30);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks ten dollars (\$10.00);

Electrically driven passenger vehicles, ten dollars (\$10.00);

All motorcycles, two dollars (\$2.00);

Tractors and/or trucks, ten dollars (\$10.00);

Buses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars (\$2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars (\$5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars (\$10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and

bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires.

Bicycles with motor attachment, one dollar (\$1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half ($\frac{1}{2}$) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of two dollars (\$2.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

All fees, other than license fees, unless otherwise specifically provided, shall hereafter be deposited in, and paid into, the earmarked revenue fund and shall be used to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, including the manufacturer and delivery of license plates. Any reference in this code to the motor vehicle recording fund or the motor vehicle administration fund shall be taken to mean the motor vehicle recording account in the earmarked revenue fund.

History: En. Sec. 6, Ch. 75, L. 1917; Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; 1, Ch. 199, L. 1921; re-en. Sec. 1760, R. amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1923; 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, L. 1943; amd. Sec. 2, Ch. 200, L. 1945;

amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund and shall be used to pay" in what is now the last paragraph for "the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid"; added the second sentence to the same paragraph; deleted a former next to last paragraph reading, "There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees"; and substituted "motor vehicle recording account" for "motor vehicle recording fund" in the paragraph later deleted by Ch. 121, Laws 1965.

Chapter 178, Laws 1963, amended former paragraph (c), for previous text of which see parent volume, to read, "In every county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above, the net license fee derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of each such county and shall be allocated and divided by the county treasurer as hereinafter provided. The motor vehicle license fund in each such county shall be divided between accounts designated as 'city road fund' and 'county road fund' in a prorata manner based upon the total number of miles of all public streets and highways situated within the limits of incorporated cities and towns within each county as compared with the total number of miles of public streets and highways situated within the county, but outside the corporate limits of any incorporated cities and towns"; inserted immediately after former paragraph (c) two new paragraphs reading, "The license fees held in the city road fund, as hereinabove provided shall be at the end of each thirty (30) day period beginning March 1, 1964, be paid by the county treasurer to the treasurer of each incorporated city or town within the county in a pro rata manner based upon the number of miles of all public streets and highways situated within such city or town as compared to the total number of miles of all public streets and highways within the limits of all incorporated cities

and towns within the county. The city or town treasurer shall hold said moneys in a separate fund designated as the 'city road fund' which shall be used by the city or town council only for the construction and repair of streets and highways within the corporate limits of such incorporated city or town" and "The net license fees derived from the registration of vehicles shall be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county"; and added a final paragraph reading, "The board of county commissioners of each county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above shall prior to March 1 of each year, beginning with the year 1964, determine the number of miles of public streets and highways situated in each incorporated city and town in the county, and the number of miles of public streets and highways within the county, but outside the corporate limits of the incorporated cities and towns, in order that the motor vehicle license and registration fees can be divided between the 'county road fund' and each 'city road fund' in the pro rata manner as provided in this act. The board of county commissioners shall at the same time also compute the percentage of said motor vehicle license and registration fees to be paid by the county treasurer to the treasurer of each incorporated city and town and also the percentage to be deposited in the county road fund."

Chapter 121, Laws 1965, adopted both 1963 amendments; increased the fee for change of ownership by registered dealer from \$1.00 to \$2.00; substituted "unless otherwise specifically provided" for "mentioned and described in sections 53-110 and 53-112, and in section 53-135" near the beginning of what is now the final paragraph; and deleted a next to last paragraph reading, "Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording account more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county."

Chapter 197, Laws 1965, effective December 31, 1966, deleted several paragraphs relating to the county motor vehicle license fund, for text of which see pages 538 and 539 in parent volume and above note relating to Chapter 178, Laws

1963; and deleted the three paragraphs inserted and added by Chapter 178, Laws 1963.

The 1971 amendment deleted "other than motorcycles" following "dealers in motor vehicles" at the beginning of the second paragraph; deleted from the end of the second paragraph a proviso reading "provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be

issued a license unless he so conforms"; increased the fee for dealers in motorcycles and trailers from \$15.00 to \$30.00; and made minor changes in phraseology.

Cross-Reference

Property tax stickers required on house trailers, secs. 84-6601 to 84-6605.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-129. (1760.7) Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt. Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, and the payment of property taxes as is required by sections 84-6008 or 84-406, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration Receipt" and forward a duplicate copy of certificate of registration to the registrar of motor vehicles. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. The registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955; amd. Sec. 26, Ch. 206, L. 1963; amd. Sec. 2, Ch. 290, L. 1967.

Amendments

The 1963 amendment deleted former subsections (2) and (3), for text of which see parent volume; and substituted "under the provisions of this act" for "as hereinafter set forth" after "entered into under" at the end of this section.

The 1967 amendment inserted "and/or user" after "owner" and substituted "if such owner and/or user is" for "while" after "uses the vehicle" in the first sentence; inserted "and the payment of property taxes as is required by sections 84-6008 or 84-406" after "county treasurer" in the second sentence; deleted "which is a part of an interstate fleet registered and licensed under the provisions of section 53-114, nor to any vehicle" before "covered by" and substituted "the laws of Montana" for "this act" after "the provisions of" in the last sentence.

53-133. (1763) **Definitions.** The words and phrases used in this act shall be construed as follows, unless the context may otherwise require: a to f. * * * [Same as parent volume.]

g. The term "dealer" shall mean and include any person, firm, association, or corporation engaged in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who is qualified for issuance of a dealer's license under section 53-118, and no person, firm, association or corporation shall be issued a dealer's license by the registrar of motor vehicles unless they qualify as a dealer defined herein. The term "dealer" does not include the following: (1) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction; or (2) employees of such persons when engaged in the specific performance of their duties as such employees; or (3) public officers while performing or in the operation of their duties. A dealer dealing in used cars only shall deliver to the buyer on completion of sale a transferable title, and shall purchase a Montana store license.

h to j. * * * [Same as parent volume.]

k. The term "manufacturer" shall include any person, firm, corporation or association engaged in the manufacture of any motor vehicles, trailers, or semitrailers as a regular business. Dealer shall deliver, under oath, a notarized certificate with any used motor vehicle, stating the full name and last known address of the previous owner of said motor vehicle, and state where the motor vehicle was last registered.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965.

Amendment

The 1965 amendment divided the language in former paragraph g into the present first and third sentences of paragraph g; inserted "association" after "firm" in two places in the first sentence of paragraph g; substituted "exchanging, or acting as a broker of" for "repairing, and reconditioning" after "business of buying, selling" in the first sentence of paragraph g; substituted "is qualified for issuance of a dealer's license under section 53-118" for "maintains a place of business with adequate facilities and equipment for the servicing, repair, maintenance, and reconditioning of new or used motor vehicles and also adequate display facilities for at least one motor vehicle" in the first sentence of paragraph g; deleted from the end of the present first sentence of paragraph g a proviso reading, "provided, however, that a used car dealer only shall have a building as an established place of business and need no facilities for repair, maintenance and reconditioning of used

cars"; inserted the second sentence in paragraph g; inserted "A dealer dealing in used cars only" at the beginning of the third sentence of paragraph g; and added the last sentence to paragraph k.

Repealing Clauses

Section 5 of Ch. 256, Laws 1965 read "Section 53-138, R. C. M. 1947, is repealed."

Section 7 of Ch. 256, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 6 of Ch. 256, Laws 1965 read "If any clause, sentence, paragraph or part of this act shall be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph or part directly adjudged to be invalid or inoperative."

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-136. (1763.4) Alteration or forgery of certificate of title or assignment thereof and penalty therefor. Any person who shall alter or forge or cause to be altered or forged, any motor vehicle certificate of title or any assignment thereof, or who shall hold or use any such certificate or assignment knowing the same to have been altered or forged, shall be deemed guilty of a felony, upon which conviction thereof shall be liable to pay a fine of not more than five thousand dollars (\$5,000) or to imprisonment in any penal institution within the state for a period of not more than ten (10) years, or both, in the discretion of the court.

History: En. Sec. 12, Ch. 113, L. 1925; amd. Sec. 1, Ch. 334, L. 1969.

Amendments

The 1969 amendment inserted "motor

vehicle" before "certificate of title" and deleted "issued by the registrar of motor vehicles pursuant to the provisions of this section" after "certificate of title."

53-138. (1763.6) Repealed.

Repeal

This section (Sec. 14, Ch. 113, L. 1925; Sec. 1, Ch. 221, L. 1947), relating to the

licensing of used car dealers, was repealed by Sec. 5, Ch. 256, Laws 1965.

53-139. (1763.7) Penalty for sale of vehicle with engine number altered or changed—application for special number. (1) Any person or persons, firm or corporation, who, thirty days after the taking effect of this section, shall sell or offer for sale in this state a vehicle, the original engine number of which has been destroyed, removed, altered, covered or defaced, with the exception of electrically propelled vehicles shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than two hundred dollars, nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than thirty days nor more than one hundred and eighty days, and upon a second or subsequent conviction under this section, the punishment shall be imprisonment in the state prison for a term of not less than one year nor more than five years: Provided, however, that any person or persons, firm or corporation, being the owner or custodian of or having possession of a vehicle at the time of the taking effect of this article, the original engine number of which has been previously destroyed, removed, altered or defaced, shall before the expiration of thirty days after the taking effect of this article apply to the registrar of motor vehicles on a blank to be prepared and furnished by the registrar of motor vehicles upon request, for permission to make or stamp, or cause to be made or stamped on the engine of such vehicle, a special engine number.

(2) * * * [Same as parent volume.]

(3) Upon receipt of such application, together with a fee of two dollars (\$2.00), the registrar of motor vehicles shall issue to said applicant written permission to make or stamp on the engine of such vehicle a special engine number to be designated by the registrar of motor vehicles, and when such special engine number so designated has been stamped or otherwise placed on the engine of such motor vehicle it shall become and thereafter be the lawful engine number of such vehicle, for the purpose of

identification and registration and for all other purposes under the provisions of this chapter, and the owner thereof may sell or transfer the same under said special engine number so designated by the registrar of motor vehicles; and any person or persons who shall destroy, remove, cover, alter or deface any special engine number so designated by the registrar of motor vehicles shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term of not less than two years nor more than ten years.

(4) In designating special engine numbers for motor vehicles under the provisions of this chapter the registrar of motor vehicles shall designate and number the same consecutively, beginning with the number (1), preceded by the letters S. N. and followed by the letters for each and every make of motor vehicle for which a special application engine number shall be made, and in the order of the filing of application therefor: Provided, that from and after the taking effect of this section, the registrar of motor vehicles shall not register any vehicle without an engine number or issue a license for the operation of the same except as specifically provided for herein; and further, before issuing said license the registrar of motor vehicles shall require of the applicant a statement that the special number assigned to be placed on the particular vehicle in question has been put on in a workmanlike manner, and this statement shall be certified to by the sheriff, chief of police, or other convenient peace officer, that he has inspected said vehicle and found said number to be on said motor vehicle as required by the registrar of motor vehicles. Nothing herein shall be construed to prevent any manufacturer or importer, or their agents other than dealers, from doing his own numbering on motor vehicles or parts removed or changed and replacing the numbered parts.

History: En. Sec. 15, Ch. 113, L. 1925; amd. Sec. 31, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified near the beginning of subsection (3) from \$1.00 to \$2.00; and made minor changes in subsections (1) and (4).

53-139.1. Penalty for altering identification number. A person who willfully removes or falsifies an identification number of a motor vehicle or engine for a motor vehicle is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 256, L. 1969. **Title of Act**

An act to make unlawful acts relating to altering the identification numbers of motor vehicles.

53-145. Expiration of registration on transfer of ownership of vehicle—duty to remove plates. Upon the transfer of ownership of a motor vehicle, the registration of the motor vehicle shall expire and it shall be the duty of the transferor immediately to remove the license plates from the vehicle.

History: En. Sec. 1, Ch. 127, L. 1969.

Title of Act

An act pertaining to the registration of motor vehicles; requiring removal of li-

cense plates from motor vehicles upon transfer of ownership, authorizing transferor to transfer license plates from original motor vehicle to another motor vehicle acquired during current registration

year upon proper application and payment of fees and taxes, if any; requiring new application and registration for all motor vehicles transferred within ten (10) days; and amending sections 32-3203, 53-106, 53-106.6, 53-107, 53-108, 53-115 and 53-119, R. C. M. 1947.

53-146. Transfer of license plates to another motor vehicle. Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year, he may file an application, in the office of the county treasurer where the motor vehicle is taxable, upon a form to be prepared and furnished by the registrar of motor vehicles, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within ten (10) days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made.

History: En. Sec. 2, Ch. 127, L. 1969; amd. Sec. 6, Ch. 138, L. 1971.

Amendments

The 1971 amendment inserted "application for" before "transfer of the license plates" at the beginning of the second sentence.

53-147. New registration required for transferred vehicle. Except as otherwise provided herein, the new owner of the transferred motor vehicle shall, before operating or driving the same upon the public highways of this state, make application and pay the registration fees and taxes as provided by section 53-114, as if the same was being registered for the first time in that registration year.

History: En. Sec. 3, Ch. 127, L. 1969; amd. Sec. 7, Ch. 138, L. 1971.

Amendments

The 1971 amendment inserted "Except as otherwise provided herein" at the beginning of the section.

CHAPTER 2—USE OF HIGHWAYS BY NONRESIDENT CAR OWNERS— ACCIDENTS—SERVICE OF PROCESS

53-202. Secretary of state attorney for service of process.

References

Olsen v. Dairyland Mut. Ins. Co., 248 F Supp 639.

53-203. Operation of motor vehicle as appointment, etc.

References

Olsen v. Dairyland Mut. Ins. Co., 248 F Supp 639.

53-204. Repealed.

Repeal

This section (Sec. 4, Ch. 10, L. 1937; Sec. 10, Ch. 117, L. 1961), relating to

service of process on nonresident motorist, was repealed by Sec. 2, Ch. 189, Laws 1963.

CHAPTER 4—ELIMINATION OF RECKLESS DRIVING—RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS

Section 53-418.	Definitions.
53-420.	Supervisor to furnish operating record.
53-421.	Report required following accident.
53-422.	Determination of security required—suspension of license and registration—exceptions—liability insurance.
53-432.	Satisfaction of judgments.
53-438.	Motor vehicle liability policy defined.

53-418. Definitions. The following words and phrases, when used in this act shall, for the purposes of this act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1 to 11. * * * [Same as parent volume.]

12. "Proof of financial responsibility"—Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

13 and 14. * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967.

Amendments

The 1967 amendment amended subsection 12 to increase the minimum requirements of financial responsibility from \$5,000 to \$10,000 for bodily injury to or death of one person in any one accident, from \$10,000 to \$20,000 for bodily injury to or death of two or more persons in any one accident, and from \$1,000 to \$5,000 for injury to or destruction of property of others in any one accident.

Intent of Legislature

General legislative intent in enacting financial responsibility provisions of the Motor Vehicle Safety Responsibility Act was: (1) to provide for voluntary and not compulsory automobile liability insurance for motorist who has not become involved in automobile accident, (2) to require compulsory proof of ability to respond in damages resulting from automobile accident after motorist becomes involved in

such accident, and (3) to require compulsory proof of financial responsibility for future automobile accidents, from motorist (a) convicted of certain driving offenses, or (b) who has outstanding unsatisfied judgment against him as result of past automobile accident; motorist who voluntarily carried ordinary automobile liability policy at time he became involved in accident was exempted from requirements of proof of ability to respond in damages whereas motorist who has neither been convicted nor forfeited bail for one of driving offenses referred to in act nor who has outstanding unsatisfied judgment against him as result of previous automobile accident is not required to furnish proof of future financial responsibility at all. *Boldt v. State Farm Mut. Automobile Ins. Co.*, 151 M 337, 443 P 2d 33.

References

Schwentner v. White, 199 F Supp 710, 711.

53-420. Supervisor to furnish operating record. The supervisor shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this act, which abstract shall also fully designate the motor vehicles, if any registered in the

name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the supervisor shall so certify. A fee of two dollars (\$2) shall be paid for said certified abstract.

History: En. Sec. 3, Ch. 204, L. 1951; amd. Sec. 17, Ch. 121, L. 1965; amd. Sec. 1, Ch. 381, L. 1971.

Amendments

The 1965 amendment increased the fee

specified in the final sentence from 50¢ to \$1.00.

The 1971 amendment increased the fee specified in the final sentence from \$1.00 to \$2.00.

53-421. Report required following accident. In addition to the reports required under chapter 12, Title 32 of the R. C. M. 1947, the operator of any motor vehicle which is in any manner involved in an accident within this state, in which any person is killed or injured or in which damage to the property of any one person in excess of two hundred and fifty dollars (\$250) is sustained, shall within ten (10) days after such accident report the matter in writing to the supervisor. Such report, the form of which shall be prescribed by the supervisor, shall contain information to enable the supervisor to determine whether the requirements for the deposit of security under section 53-422 are inapplicable by reason of the existence of insurance or other exceptions specified in this act. The supervisor may rely upon the accuracy of the information unless and until he has reason to believe that the information is erroneous. If such operator be physically incapable of making such report, then any person may do so for and on his behalf. The operator or the owner shall furnish such additional relevant information as the supervisor shall require.

History: En. Sec. 4, Ch. 204, L. 1951; amd. Sec. 1, Ch. 55, L. 1971.

Amendments

The 1971 amendment increased the minimum damage specified in the first sentence from \$100 to \$250.

53-422. Determination of security required—suspension of license and registration—exceptions—liability insurance. (a) If within twenty (20) days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person in excess of two hundred fifty dollars (\$250), the supervisor does not have on file evidence satisfactory to him that the person who would otherwise be required to file security under subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, the supervisor shall determine the amount of security which shall be sufficient in his judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b). * * * [Same as parent volume.]

(c) This section shall not apply under the conditions stated in section 53-423, nor;

1. to such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. to such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

3. to such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the supervisor, covered by any other form of liability insurance policy or bond; nor

4. to any person qualifying as a self-insurer under section 53-451, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this state shall execute a power of attorney authorizing the supervisor to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

History: En. Sec. 5, Ch. 204, L. 1951; amd. Sec. 1, Ch. 83, L. 1959; amd. Sec. 2, Ch. 30, L. 1967; amd. Sec. 1, Ch. 56, L. 1971.

Amendments

The 1967 amendment increased the minimum proof of financial responsibility from \$5,000 because of bodily injury to or death of one person in any one accident

to \$10,000; increased from \$10,000 to \$20,000 the amount required for bodily injury to or death of two or more persons in any one accident; and increased from \$1,000 to \$5,000 the amount required for injury to or destruction of property of others in any one accident, all in the last paragraph.

The 1971 amendment increased the minimum damage amount specified in subsection (a) from \$100 to \$250.

53-432. Satisfaction of judgments. Judgments herein referred to shall, for the purposes of this act only, be deemed satisfied:

1. when ten thousand dollars (\$10,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

2. when, subject to such limit of ten thousand dollars (\$10,000) because of bodily injury to or death of one person, the sum of twenty thou-

sand dollars (\$20,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury or death of two or more persons as the result of any one accident; or

3. when five thousand dollars (\$5,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

History: En. Sec. 15, Ch. 204, L. 1951; amd. Sec. 3, Ch. 30, L. 1967.

Amendments

The 1967 amendment doubled the amounts required by paragraphs 1 and 2; and increased the amount required by paragraph 3 from \$1,000 to \$5,000.

53-438. Motor vehicle liability policy defined. (a). * * * [Same as parent volume.]

(b) Such owner's policy of liability insurance: 1. shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and 2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident and subject to said limit for one person, twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

(c) to (k). * * * [Same as parent volume.]

History: En. Sec. 21, Ch. 204, L. 1951; amd. Sec. 4, Ch. 30, L. 1967.

Amendments

The 1967 amendment increased the minimum proof of financial responsibility from \$5,000 to \$10,000 because of bodily injury to or death of one person in any one accident, from \$10,000 to \$20,000 because of bodily injury to or death of two or more persons in any one accident, and from \$1,000 to \$5,000 because of injury to or destruction of property of others in any accident, all in subsection (b).

Defenses Available to Insurer

Insurance company being sued by injured party for amount of judgment previously secured against insured motorist was entitled to defend on ground that ac-

cident was not reported to it until year later, in breach of the policy provisions requiring prompt notice, despite contention that policy was subject to that portion of act eliminating policy defenses. *Boldt v. State Farm Mut. Automobile Ins. Co.*, 151 M 337, 443 P 2d 33.

Garage Business Exclusion

Garage business exclusion clause of policy was not violative of public policy as expressed in statute in absence of showing that policy was issued to show proof of financial responsibility. *Northern Assurance Co. of America v. Truck Ins. Exchange*, 151 M 132, 439 P 2d 760.

References

Empire Fire & Marine Ins. Co. v. Goodman, 147 M 396, 412 P 2d 569.

CHAPTER 5—STATE-OWNED OR LEASED MOTOR VEHICLES

- Section 53-514. Highway commission to be custodian of motor vehicles owned or leased by state.
- 53-515. Rules and regulations—authority and enforcement.
- 53-516. Seal on motor vehicles.
- 53-517. State car for state business only—compensation for driving personal vehicle.
- 53-518. Adoption of travel regulations—contents—removal from office or violations.
- 53-519. Requisitions for purchases—operating history records.
- 53-520. Certain motor vehicles exempted.
- 53-521. Violation a misdemeanor—dismissal.

53-501. Repealed.

Repeal and labeling of state-owned vehicles, was repealed by Sec. 9, Ch. 320, Laws 1971.

Section 53-501 (Sec. 1, Ch. 2, L. 1941; Sec. 1, Ch. 211, L. 1953), relating to color

53-503 to 53-508. Repealed.

Repeal 1953; Sec. 1, Ch. 157, L. 1961), relating to the use of state-owned vehicles, were repealed by Sec. 9, Ch. 320, Laws 1971.

Sections 53-503 to 53-508 (Secs. 1 to 6, Ch. 93, L. 1941; Secs. 2 to 6, Ch. 211, L.

53-510 to 53-513. Repealed.

Repeal 1 to 3, Ch. 181, L. 1969), relating to the state motor vehicle pool, were repealed by Sec. 9, Ch. 320, Laws 1971.

Sections 53-510 to 53-513 (Sec. 9, Ch. 93, L. 1941; Sec. 7, Ch. 211, L. 1953; Secs.

53-514. Highway commission to be custodian of motor vehicles owned or leased by state. The state highway commission is hereby constituted the custodian of all motor vehicles owned or leased by the state of Montana or its boards, commissions or agencies operated out of any areas or locations where five (5) or more state vehicles or three (3) or more state agencies are located.

History: En. Sec. 1, Ch. 320, L. 1971.

Title of Act

An act providing for the transfer of authority of state-owned motor vehicles to the highway commission; providing for the establishment of a state motor pool for maintenance and storage; providing for regulation and use of vehicles; provid-

ing for lettering and identification; providing for records; providing for exceptions; establishing a penalty and repealing sections 53-501, 53-503, 53-504, 53-505, 53-506, 53-507, 53-508 and 53-510, R. C. M. 1947, and sections 53-511, 53-512 and 53-513, R. C. M. 1947, enacted as Chapter 181, Laws of 1969.

53-515. Rules and regulations—authority and enforcement. The state highway commission is hereby delegated the power and authority to formulate and enforce reasonable rules and regulations governing the use and operation of all motor vehicles used in the service of the state of Montana consistent with the terms of this act. The commission shall have the authority to assign the use of all state-owned motor vehicles to state officers, departments, bureaus, institutions and commissions, or employees thereof. All actual costs for maintenance, service and storage to these state vehicles shall be paid to the highway commission by the individual state agencies involved.

History: En. Sec. 2, Ch. 320, L. 1971.

53-516. Seal on motor vehicles. Every motor vehicle owned by the state of Montana shall have a seal eight (8) inches in diameter placed upon the vehicle in accordance with the rules and regulations adopted by the highway commission.

History: En. Sec. 3, Ch. 320, L. 1971.

53-517. State car for state business only—compensation for driving personal vehicle. No state officer or employee shall use any state-owned vehicle for his own personal and private use, nor shall he be compensated for driving his own vehicle except if such motor vehicle is on state business.

History: En. Sec. 4, Ch. 320, L. 1971.

53-518. Adoption of travel regulations—contents—removal from office for violations. The state highway commission shall adopt and formulate travel regulations providing:

(a) Filing an application for travel showing necessity for trips, points to be visited, approximate time of departure and return;

(b) Filing a report upon completion of the trip, showing actual points reached, mileage traveled and car cost record data;

(c) Recording in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service; and,

(d) That a decal be affixed to the instrument panel of every state-owned vehicle with the following information contained thereon:

Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled passenger carrying vehicle, or of any motor-propelled passenger carrying vehicle leased by the state government, for other than official purposes shall be summarily removed from office by the head of the department of establishment concerned.

History: En. Sec. 5, Ch. 320, L. 1971.

53-519. Requisitions for purchases—operating history records. All requisitions for automobile purchases shall be submitted to the state controller twice yearly, at such times as he may specify and no other requisitions for automobile purchases shall be accepted by him, unless the governor shall deem such purchase to be an emergency necessity.

All automobile operating history records shall be entered in the office of the state controller, such records to include the purchase price of the vehicle and items of expense incurred in the operation of the vehicle to include gas, oil, repairs, labor, storage and service. A complete summary of the operating cost and history record of all state-owned vehicles and trucks shall be prepared for each fiscal year.

History: En. Sec. 6, Ch. 320, L. 1971.

53-520. Certain motor vehicles exempted. The provisions of this act shall not be applicable to any motor vehicle used in service of the governor, the attorney general or the highway patrol.

History: En. Sec. 7, Ch. 320, L. 1971.

53-521. Violation a misdemeanor—dismissal. Any state officer or employee violating any of the provisions of this act shall upon conviction thereof be guilty of a misdemeanor, and such violator shall upon conviction be dismissed from state employment.

History: En. Sec. 8, Ch. 320, L. 1971. 53-506, 53-507, 53-508 and 53-510, R. C. M. 1947, and sections 53-511, 53-512 and 53-513, R. C. M. 1947, enacted as chapter 181, Laws of 1969, are hereby repealed."

Repealing Clause

Section 9 of Ch. 320, Laws 1971 read
"Sections 53-501, 53-503, 53-504, 53-505,

181, Laws of 1969, are hereby repealed."

CHAPTER 6—ADDITIONAL FEES OR TAXES ON MOTOR VEHICLES

Section 53-626. Exemptions from act.

53-638.1. Exemptions of vehicles not capable of operation on highways.

53-642. "Special mobile equipment" defined.

53-615 to 53-619. Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 219, L. 1951; Sec. 1, Ch. 139, L. 1953; Sec. 1, Ch. 89, L. 1955; Sec. 1, Ch. 175, L. 1955; Sec. 1, Ch. 177, L. 1955; Sec. 1, Ch. 251, L. 1955; Sec. 1, Ch. 258, L. 1955; Sec. 1, Ch. 103, L. 1959; Sec. 1, Ch. 211, L. 1959; Sec. 1, Ch. 193, L. 1961; Sec. 1, Ch. 150,

L. 1963; Sec. 1, Ch. 195, L. 1965; Sec. 1, Ch. 224, L. 1965), relating to additional fees and taxes payable for vehicles, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3201, 32-3301 to 32-3310, 32-3312, 32-3314, and 32-3315.

53-621 to 53-623. Repealed.

Repeal

These sections (Secs. 7 to 9, Ch. 219, L. 1951; Sec. 1, Ch. 226, L. 1959), relating to

fees and penalties for trucks and trailers, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-625. Repealed.

Repeal

This section (Sec. 11, Ch. 219, L. 1951; Sec. 1, Ch. 231, L. 1957), relating to re-

ciprocity and fleet registration, was repealed by Sec. 27, Ch. 206, Laws 1963.

53-626. Exemptions from act. Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within fifteen (15) miles from such limits shall be exempt from the provisions of this act; provided that motor vehicles brought or driven into Montana by any nonresident migratory bona fide agricultural worker temporarily employed in agricultural work in this state where said motor vehicles are used exclusively for transportation of agricultural workers shall likewise be exempt from the provisions of this act; and further providing all vehicles lawfully displaying a licensed dealers plate as provided in section 53-122, Revised Codes of Montana, 1947, shall be exempt from the provisions of this act when moving to or from a dealers place of business when unladen or laden with dealers property only.

History: En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967.

Amendments

The 1967 amendment added the second proviso at the end of this section.

53-628 to 53-631. Repealed.**Repeal**

These sections (Secs. 14, 15, Ch. 219, L. 1951; Secs. 1, 2, Ch. 133, L. 1953; Sec. 1, Ch. 104, L. 1957), relating to markings of

trucks and buses, municipal taxes, and to drive-away and tow-away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-634 to 53-638. Repealed.**Repeal**

These sections (Secs. 5 to 9, Ch. 133, L. 1953), relating to drive-away and tow-

away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-638.1. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, shall not be subject to any of the terms and provisions of Title 53, R.C.M. 1947.

History: En. Sec. 3, Ch. 150, L. 1963.

Effective Date

Section 4 of Ch. 150, Laws 1963 pro-

vided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

53-639. Repealed.**Repeal**

This section (Sec. 1, Ch. 183, L. 1955), relating to special mobile equipment, was

repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-642. "Special mobile equipment" defined. "Special mobile equipment" means every vehicle which is not designed and used primarily for the transportation of persons or property on a public highway and which is operated or moved over the highway from construction project to construction project, and not removed from the confines and haul roads thereof, except for movement from construction project to storage yard, from storage yard to construction project, or from storage yard or construction project to point of repair or maintenance and return. Special mobile equipment includes, but is not limited to portable air compressors, air drills, asphalt spreaders, gravel crushing equipment and hot plant equipment, buckets, belt and front-end loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, earth moving scrapers and carry-alls, lighting, generating and power plants, welders, pumps, power shovels and draglines, cranes, crane mounted heel-boom log loaders, fork-lift trucks, lumber carriers, bunkhouses, tool houses, shop cars, oil distributors, scales and scale houses, and conveyors. It also includes self-propelled tractor-drawn earth moving equipment, dump trucks and tractor-dump trailer combinations which, because of excess width, height, length, or unladen weight, cannot be moved over a public highway without a permit as provided in section 32-1127, R.C.M. 1947, and which are operated unladen except within the boundaries of the project limits, as defined by the contract, and adjacent

haul roads. However, the term "special mobile equipment" shall not include a vehicle such as a truck, truck-tractor, trailer, semitrailer, house trailer, or house car, designed for the transportation of persons or property.

History: En. Sec. 4, Ch. 183, L. 1955;
amd. Sec. 2, Ch. 150, L. 1963.

Amendment

The 1963 amendment substantially re-wrote this section. For previous version, see parent volume.

53-643. Repealed.

Repeal

This section (Sec. 5, Ch. 183, L. 1955), relating to identification plates for special

mobile equipment, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 7—RECIPROCITY AND PROPORTIONAL REGISTRATION

- Section 53-701. Declaration of policy.
53-702. Definitions.
53-703. Montana motor vehicle reciprocity board creation.
53-704. Authority of Montana motor vehicle reciprocity board.
53-705. Authority for reciprocity agreements, provisions, reciprocity standards.
53-706. Base state registration reciprocity.
53-707. Proportional registration of fleet vehicles.
53-708. Declarations of extent of reciprocity.
53-709. Extension of reciprocal privileges to lessees authorized.
53-710. Automatic reciprocity.
53-711. Proportional registration not exclusive.
53-712. Proportional registration of fleet vehicles, application, fee-formula and payment.
53-713. Registration and identification of proportionally registered vehicles, effect of such registration.
53-714. Proportional registration cannot be in a single jurisdiction.
53-715. Registration of additional fleet vehicles.
53-716. Withdrawal of fleet vehicles, credits and accounting.
53-717. New fleet—estimated mileage.
53-718. Fleet registration may be denied.
53-719. Preservation of proportional registration records.
53-720. Relation to other state laws.
53-721. Suspension of reciprocity benefits.
53-722. Agreements to be written, filed and available for distribution.
53-723. Reciprocity agreements in effect at time of act.
53-724. Act part of and supplement to motor vehicle registration law.

53-701. Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in this and such other states, provinces, territories and countries thus contributing to the economic and social development and growth of this state.

History: En. Sec. 1, Ch. 206, L. 1963.

Title of Act

An act relating to motor vehicles; creating, amending and repealing laws on motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces,

territories and countries, so as to conform substantially with the model reciprocity and proration draft proposed by the national committee on uniform traffic laws and ordinances; providing a declaration of policy, definitions, creation of Montana motor vehicle reciprocity board, and authority of said board; and providing other

related sections for carrying out the policy, as amended; repealing section 53-625, construction and administration of this R.C.M., 1947, as amended; providing an act; providing a severability clause; effective date.
amending section 53-129, R.C.M., 1947,

53-702. Definitions. As used in this act: (1) "Commercial vehicle" means any vehicle which is operated in more than one state and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

(2) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country and a state or province of a foreign country.

(3) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(4) "Legal residence," as used in this act only, means a jurisdiction where the person lives or conducts his business. Such residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in this act shall be confined to the definition given, and shall not be confused with the word "domicile." This definition of "residence" further recognizes that a person may have several residences, but only one domicile.

(5) (a) "Properly registered," as applied to place of registration means:

(i) The jurisdiction where the person registering the vehicle has his legal residence, or

(ii) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business and, the vehicle has been assigned to such place of business, or

(iii) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the Montana motor vehicle reciprocity board shall make the final determination, but in making such determination, the Montana motor vehicle reciprocity board may confer with departments of the other jurisdictions affected.

(6) "Fleet" means two (2) or more commercial vehicles.

(7) "Person," for purposes of this act, means every natural person, firm, copartnership, association, or corporation.

(8) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(9) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(10) "Preceding year" means a period of twelve (12) consecutive months fixed by the Montana motor vehicle reciprocity board which period shall be within sixteen (16) months immediately preceding the commencement of the registration or license year for which proportional registration is sought; and the Montana motor vehicle reciprocity board in fixing such period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

History: En. Sec. 2, Ch. 206, L. 1963.

53-703. Montana motor vehicle reciprocity board creation. (1) There is hereby created for the purpose of administration of this act, the Montana motor vehicle reciprocity board, which shall consist of six (6) members to be appointed by the governor. One of said members shall be the registrar of motor vehicles; one shall be a member of the Montana highway patrol; one shall be a member of the Montana state highway commission; one shall be a member of the state board of equalization; one shall be an attorney from the legal staff of the Montana state highway commission; and one shall be the gross vehicle weight supervisor. In lieu of any above-named member, the governor may instead appoint a qualified representative from the commission, board or office designated. The members of the board shall meet in Helena, Montana, within two weeks after the effective date of this act. At the said first meeting and annually in December thereafter, the board shall elect a secretary who shall be a member of said board, and the board shall elect a chairman and a vice-chairman from its own membership who shall hold office for one (1) year. Election as chairman and vice-chairman shall not interfere with the member's right to vote on all matters before the board. The board shall meet at such other times as it deems advisable, but at least once every two (2) calendar months, and shall from time to time adopt rules and regulations for the administration of this act as may be deemed necessary.

(2) The board shall act collectively in harmony with recorded resolutions or motions adopted by the majority of the board at regular or special meetings, notice of which meetings shall be given to all members pursuant to the rules of said board. Four (4) members shall constitute a quorum at any meeting; but no resolution, motion, or other decision of

the board shall be adopted or passed without the favorable vote of at least four (4) members.

History: En. Sec. 3, Ch. 206, L. 1963.

Cross-References

Board abolished and functions transferred, sec. 82A-702(4).

Quasi-judicial functions transferred to board of highway appeals, sec. 82A-705.

53-704. Authority of Montana motor vehicle reciprocity board. The Montana motor vehicle reciprocity board shall have the authority to execute or make arrangements, agreements or declarations to carry out the provisions of this act.

History: En. Sec. 4, Ch. 206, L. 1963.

53-705. Authority for reciprocity agreements, provisions, reciprocity standards. The Montana motor vehicle reciprocity board may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdictions, and for which evidence of compliance is supplied, benefits, privileges and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this state. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of such other jurisdiction, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this state. Each such agreement or arrangement shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of the state and the citizens thereof and shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 5, Ch. 206, L. 1963.

53-706. Base state registration reciprocity. An agreement or arrangement entered into, or a declaration issued under the authority of this act may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

History: En. Sec. 6, Ch. 206, L. 1963.

53-707. Proportional registration of fleet vehicles. If any jurisdiction permits or requires the licensing of fleets of vehicles in interstate

or combined interstate and intrastate commerce and payment of registration fees, license fees, taxes or other fixed fees thereon on an apportionment basis commensurate with and determined by the miles traveled on and the use made of said jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in other jurisdiction under such apportionment basis from the requirements of full payment of its own registration, license fees, taxes or other fixed fees, then the Montana motor vehicle reciprocity board may, by agreement, adopt such exemption with respect to vehicles of such fleets, whether owned by residents or nonresidents of this state and regardless of where based. Such agreements, under such terms, conditions or restrictions as the Montana motor vehicle reciprocity board deems proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state shall be permitted to pay registration, license fees, taxes or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. No such agreement shall authorize, or be construed as authorizing, any vehicle so registered to be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission, if such grant is otherwise required by law. The Montana motor vehicle reciprocity board may adopt and promulgate such rules and regulations as it shall deem necessary to effectuate and administer the provisions of this subsection, and the registration of fleet vehicles under this act shall be subject to the rights, terms and conditions granted by or contained in any applicable agreement, arrangement or declaration made by the Montana motor vehicle reciprocity board.

History: En. Sec. 7, Ch. 206, L. 1963; amd. Sec. 1, Ch. 88, L. 1965.

cense fees, taxes" for "license taxes" near the beginning of the section and "license fees, taxes" for "license" following "registration" in two places.

Amendment

The 1965 amendment substituted "li-

53-708. Declarations of extent of reciprocity. In the absence of an agreement or arrangement with another jurisdiction, the Montana motor vehicle reciprocity board may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of this state and the citizens thereof, which shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 8, Ch. 206, L. 1963.

53-709. Extension of reciprocal privileges to lessees authorized. An agreement or arrangement entered into, or a declaration issued under the authority of this act, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration.

History: En. Sec. 9, Ch. 206, L. 1963.

53-710. Automatic reciprocity. On and after the effective date of this act, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this act, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

History: En. Sec. 10, Ch. 206, L. 1963.

53-711. Proportional registration not exclusive. Nothing contained in this act relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation, regular registration, temporary registration, or trip permit or registration.

History: En. Sec. 11, Ch. 206, L. 1963.

53-712. Proportional registration of fleet vehicles, application, fee-formula and payment. (1) Any owner engaged in operating one or more fleets may, in lieu of registration of vehicles under other sections of Title 53, register and license each fleet for operation in this state by filing an application with the Montana highway commission which shall contain the following information, and such other information pertinent to vehicle registration as the Montana highway commission may require:

(a) Total fleet miles. This shall be the total number of miles operated in all jurisdictions during the preceding year by the vehicles in such fleet during said year.

(b) In-state miles. This shall be the total number of miles operated in this state during the preceding year by the vehicles in such fleet during said year.

(c) A description and identification of each vehicle of such fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet shall be accompanied by a fee payment computed as follows:

(a) Divide in-state miles by total fleet miles.

(b) Determine the total amount necessary to register each and every vehicle in the fleet for which registration is requested, based on the

regular annual registration fees prescribed by section 53-122, R. C. M., 1947, as amended, and section 53-615, R. C. M., 1947, as amended and such property taxes if any be due thereon.

(c) Multiply the sum obtained under subsection (2) (b) hereof by the fraction obtained under subsection (2) (a) hereof.

History: En. Sec. 12, Ch. 206, L. 1963; **Amendment**
amd. Sec. 2, Ch. 88, L. 1965.

The 1965 amendment added "and such property taxes if any be due thereon" at the end of paragraph (2) (b).

Compiler's Notes

Section 53-615, referred to in subsection (2) (b) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

53-713. Registration and identification of proportionally registered vehicles, effect of such registration. (1) The Montana highway commission shall register the vehicles so described and identified and shall issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees, and property taxes as provided by law, for such application and for the stickers or devices issued. A fee of two dollars (\$2.00) shall be paid for each license plate, sticker or device issued for each proportionally registered vehicle. A registration card shall be issued for each proportionally registered vehicle. Such registration card shall, in addition to other information required by Title 53, bear upon its face the number of the license, sticker or other device issued for such proportionally registered vehicle and shall be carried in such vehicle at all times.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, no such vehicle shall be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission and unless said vehicle is being operated in conformity with such authority or rights.

History: En. Sec. 13, Ch. 206, L. 1963; **Effective Date**
amd. Sec. 3, Ch. 88, L. 1965.

Amendment

The 1965 amendment inserted "and property taxes as provided by law" in the first sentence of subsection (1).

Section 4 of Ch. 88, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

53-714. Proportional registration cannot be in a single jurisdiction. The right to the privilege and benefits of proportional registration of fleet vehicles extended by this act, or by any contract, agreement, arrangement or declaration made under the authority of this act, shall be subject to the condition that each fleet vehicle proportionally registered under the authority of this act shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

History: En. Sec. 14, Ch. 206, L. 1963.

53-715. Registration of additional fleet vehicles. Vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

History: En. Sec. 15, Ch. 206, L. 1963.

53-716. Withdrawal of fleet vehicles, credits and accounting. If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under the provisions of this act, the owner of such fleet shall so notify the Montana highway commission on appropriate forms to be prescribed by the Montana motor vehicle reciprocity board. The Montana highway commission may require the owner to surrender proportional registration cards and such other identification devices which have been issued with respect to such vehicles as the Montana highway commission may deem advisable. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to such vehicle, which shall be a sum equal to the amount paid with respect to such vehicle when it was first proportionally registered in such registration year, reduced by $1/12$ of the total annual gross vehicle weight fee of such vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the Montana highway commission, shall be credited to the proportional registration account of such owner. Such credit shall be applied against liability for subsequent additions to be prorated during such registration year or for additional fees due upon audit under subsection 19 [53-719] hereof. If any such credit is less than five dollars (\$5.00), no credit shall be made or entered. In no event shall such amount be credited against fees other than those for such registration year, nor shall any such amount be subject to refund.

History: En. Sec. 16, Ch. 206, L. 1963.

53-717. New fleet—estimated mileage. The initial application for proportional registration of a fleet shall state the mileage data with respect to such fleet for the preceding year in this and other jurisdictions. If no operations were conducted with such fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The Montana highway commission shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The Montana highway commission may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness thereof.

History: En. Sec. 17, Ch. 206, L. 1963.

53-718. Fleet registration may be denied. The Montana highway commission may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the Montana motor vehicle reciprocity board shall find that such other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

History: En. Sec. 18, Ch. 206, L. 1963.

53-719. Preservation of proportional registration records. Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four (4) years following the year or period upon which said application is based. Upon request of the Montana highway commission, the owner shall make such records available to the Montana highway commission at its office for audit as to accuracy of computations and payments or to pay the reasonable costs of an audit at the home office of the owner, by a duly appointed representative of the Montana highway commission. The Montana highway commission may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner.

History: En. Sec. 19, Ch. 206, L. 1963.

53-720. Relation to other state laws. The provisions of this act shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

History: En. Sec. 20, Ch. 206, L. 1963.

53-721. Suspension of reciprocity benefits. Agreements, arrangements or declarations made under the authority of this act may include provisions authorizing the Montana highway commission to suspend or cancel the exemptions, benefits or privileges granted thereunder to a person who violates any of the conditions or terms of such agreements, arrangements or declarations or who violates the laws of this state relating to motor vehicles, or rules and regulations lawfully promulgated thereunder.

History: En. Sec. 21, Ch. 206, L. 1963.

53-722. Agreements to be written, filed and available for distribution. All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed in the office of the secretary of the Montana motor vehicle reciprocity board. The secretary of the Montana motor vehicle reciprocity board shall provide copies for public distribution upon request.

History: En. Sec. 22, Ch. 206, L. 1963.

53-723. Reciprocity agreements in effect at time of act. All reciprocity and proportional registration agreements, arrangements and declarations relating to vehicles, in force and effect at the time this act becomes effective, shall continue in force and effect until specifically

amended or revoked as provided by law or by such agreements or arrangements.

History: En. Sec. 23, Ch. 206, L. 1963.

53-724. Act part of and supplement to motor vehicle registration law. This act shall be a part of Title 53, R.C.M., 1947, as amended, and supplemental to the motor vehicle registration law of this state.

History: En. Sec. 24, Ch. 206, L. 1963.

affected as a result of said part being held unconstitutional or invalid."

Separability Clause

Section 25 of Ch. 206, Laws 1963 read "Severability. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be

Repealing Clause

Section 27 of Ch. 206, Laws 1963 read "Section 53-625, R.C.M., 1947, as amended, is repealed."

Effective Date

Section 28 of Ch. 206, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 8—MARKINGS ON TRUCKS AND HEAVY VEHICLES

Section 53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications.

53-802. Dealers and manufacturers exempt.

53-803. Penalty for violations.

53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications. No motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds shall operate upon the highways of the state of Montana unless there shall be displayed on both sides of each vehicle operated under its own power, either alone or in combination, the name, or trade name and address or M.R.C. or I.C.C. certificate number of the person or corporation under whose jurisdiction the vehicle, or vehicles, is or are being operated.

The display of name must be in letters in sharp contrast to the background and size, shape, and color readily legible in daylight from a distance of fifty (50) feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, so prepared as to otherwise meet the identification and legibility requirements of this act.

History: En. Sec. 1, Ch. 133, L. 1963.

Title of Act

An act to provide for the marking of motor vehicles operating on the highways of the state of Montana, providing a penalty and providing an effective date.

53-802. Dealers and manufacturers exempt. This act shall not apply to motor vehicles being transported to dealers, from point of manufacture, or from one dealer to another, or when being demonstrated to a prospect, or delivered to a buyer from a dealer or a manufacturer.

History: En. Sec. 2, Ch. 133, L. 1963.

53-803. Penalty for violations. Any person convicted of violating this act shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than one (1) month, or both.

History: En. Sec. 3, Ch. 133, L. 1963. **Effective Date**

Section 4 of Ch. 133 read "The effective date of this act is July 1, 1963."

CHAPTER 9—REMOVAL AND SALE OF ABANDONED VEHICLES

Section 53-901. Prohibition against parking or leaving vehicles on public or private property.

53-902. Taking vehicle into custody.

53-903. Notice to owner.

53-904. Reclaiming vehicle.

53-905. Sale of vehicle if not reclaimed.

53-906. Certificate of sale.

53-907. Issuing certificate of ownership.

53-908. Transmitting return of sale and balance of proceeds.

53-909. Penalty for violation and enforcement of provisions.

53-901. Prohibition against parking or leaving vehicles on public or private property. No vehicle shall be parked or left standing upon the right of way of any public highway for a period longer than forty-eight (48) hours, or upon a city street, any state, county or city property for a period longer than five (5) days.

History: En. Sec. 1, Ch. 288, L. 1967; **Amendments**
amd. Sec. 1, Ch. 169, L. 1969.

Title of Act

An act to provide for the removal and disposal of abandoned motor vehicles and for related purposes.

The 1969 amendment inserted "for a period longer than forty-eight (48) hours" after "public highway" and made minor changes in phraseology.

53-902. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of forty-eight (48) hours or more on any public highway, or for a period of five (5) days or more on any city street, or public property.

(a) The Montana highway patrol if the vehicle is upon the right of way of any public highway other than county road.

(b) The sheriff of the county if the vehicle is upon the right of way of any county road or private property within the county.

(c) The city police if the vehicle is upon a city street within the city.

(2) The Montana highway patrol, sheriff of the county, or the city police may use its, or his personnel, equipment and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment and facilities for those purposes.

History: En. Sec. 2, Ch. 288, L. 1967; sentence of subsection (1) to reduce the
amd. Sec. 2, Ch. 169, L. 1969. abandonment period for vehicles found on
public highways from five days to forty-eight hours.

Amendments

The 1969 amendment revised the first

53-903. Notice to owner. (1) Within seventy-two (72) hours after any vehicle is removed and held by or at the direction of the Montana highway patrol or the city police, they shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol or the city police shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number and license number, if available, any costs incurred to that date in the removal, preservation and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff shall make reasonable efforts to ascertain the name and address of the owner, lien holder, or person entitled to possession of the vehicle. If such name and address are ascertained, the sheriff shall notify such owner and lien holder or person of the location of the vehicle.

(a) If the vehicle is registered in the office of the registrar of motor vehicles of this state, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lien holder, if any, at the latest address shown by the records in the office of the registrar, return receipt requested and postage prepaid thereon, is mailed at least thirty (30) days before the vehicle is sold as hereinafter provided.

(b) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner; or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one (1) publication in one (1) newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this act. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail.

History: En. Sec. 3, Ch. 288, L. 1967.

53-904. Reclaiming vehicle. The owner, lien holder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the sheriff of the county in which the vehicle was located at the time it was taken into custody, satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation and custody of the vehicle. He shall not be required to pay storage charges for a period longer than ninety (90) days.

History: En. Sec. 4, Ch. 288, L. 1967.

53-905. Sale of vehicle if not reclaimed. (1) If a vehicle is not reclaimed as provided in the preceding section within thirty (30) days after notification by registered or certified mail or prescribed publication, the sheriff of the county in which it is located at the time it was taken into custody, shall sell it at public auction in the manner provided in sections 93-5824 through 93-5832 of the Revised Codes of Montana, 1947.

(2) After any vehicle has been so sold, the former owner or person entitled to possession has no further right, title, claim or interest in or to the vehicle.

History: En. Sec. 5, Ch. 288, L. 1967.

53-906. **Certificate of sale.** (1) When any vehicle is so sold, the sheriff at the time of the payment of the purchase price, shall execute a certificate of sale in duplicate. He shall deliver the original certificate to the purchaser and retain the copy.

(2) The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle and a stipulation that no warranty is made as to the condition or title of the vehicle.

History: En. Sec. 6, Ch. 288, L. 1967.

53-907. **Issuing certificate of ownership.** The registrar of motor vehicles shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of the fees required by law.

History: En. Sec. 7, Ch. 288, L. 1967.

53-908. **Transmitting return of sale and balance of proceeds.** (1) When any vehicle is sold as provided in section 5 [53-905], the sheriff shall transmit to the registrar of motor vehicles and to the county treasurer a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol. The county treasurer shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of vehicles seized by city police, and the city treasurer shall deposit such proceeds in the city street fund.

History: En. Sec. 8, Ch. 288, L. 1967.

53-909. **Penalty for violation and enforcement of provisions.** Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25), nor more than three hundred dollars (\$300), or by imprisonment in the county jail for not less than five (5) days, nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 9, Ch. 288, L. 1967.

or void, the remainder of this act shall continue in full force and effect."

Separability Clause

Section 10 of Ch. 288, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional

Effective Date

Section 11 of Ch. 288, Laws 1967 read "This act shall become effective from and after the 1st day of July, 1967."

CHAPTER 10—SNOWMOBILES

- Section 53-1012. Definition of terms.
 53-1013. Certificate of ownership.
 53-1014. Transfer of title or interest.
 53-1015. Lost or mutilated certificates.
 53-1016. Exemptions.
 53-1017. Report of stolen and recovered snowmobiles.
 53-1018. Operation on public roads and streets.
 53-1019. Unlawful operation on streets and highways.
 53-1020. Other unlawful operation.
 53-1021. Accidents involving snowmobiles.
 53-1022. Enforcement.
 53-1023. Penalties.
 53-1024. Tax on snowmobiles—definitions.
 53-1025. Display of tax-paid decals on snowmobiles required—application and issuance.
 53-1026. Application to be made annually—operation permitted after application for decal.
 53-1027. Failure to display decal a misdemeanor—penalty.
 53-1028. Officers authorized to enforce act.

53-1001 to 53-1011. Repealed.

Repeal

mobiles, were repealed by Sec. 13, Ch.

Sections 53-1001 to 53-1011 (Secs. 1 to 434, Laws 1971.
 11, Ch. 326, L. 1969), relating to snow-

53-1012. Definition of terms. As used in this act, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning be intended:

(a) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

(b) "Snowmobile" includes any self-propelled vehicle designed primarily for travel on snow or ice or natural terrain, which may be steered by wheels, skis, or runners, and which is not otherwise registered or licensed under the laws of the state of Montana.

(c) "Owner" shall include every person as defined herein, other than a lien holder or other person having a security interest only, holding record title to a snowmobile, and entitled to the use or possession thereof.

(d) "Operator" shall include every person who operates or is in actual physical control of the operation of a snowmobile.

(e) "Roadway" shall include only those portions of any highway, road or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(f) "Commission" means the fish and game commission of the state of Montana.

History: En. Sec. 1, Ch. 434, L. 1971.

Title of Act

An act establishing certificates of ownership and records of theft of snowmobiles, regulating operation of snowmobiles, providing exemptions, transfer of

interest, prohibiting licensing and registration by political subdivisions, establishing enforcement, and providing penalties for any violation of this act; repealing sections 53-1001 through 53-1011, R.C.M., 1947.

53-1013. Certificate of ownership. (1) No snowmobile shall be operated upon any public or private lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets or highways, unless it has first been registered with the state board of equalization in accordance with the laws of this state.

(2) Before such registration may be accomplished, the owner of a snowmobile shall make application for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose, and to provide for substantially the following information: Name of owner, residence by town and county, business or home mail address, name and address of lien holder, amount due under contract or lien, name and address of manufacturer, model number or name, serial number, and name and address of dealer or other person from whom acquired. The application shall be signed by at least one owner, or by a properly authorized officer or representative of the owner.

(3) If a snowmobile has previously been registered, under the provisions of this act, the application for registration must be accompanied by the immediately previous registration receipt, or by an affidavit upon a prescribed form, stating under oath that the vehicle had not been operated during the immediately previous year; provided, however, that this paragraph shall not be applicable to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of this act were not in force and effect.

(4) Upon completion of the application of registration, in quintuplicate, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two copies of the application marked "owner's certificate of registration," one of which shall be marked "file copy," and forward one copy and the application to the registrar of motor vehicles, who shall cause to be entered the information contained in the application upon the corresponding records of his office, and shall furnish the applicant a certificate of ownership, which shall contain the information found on the registration, and the owner shall, at all times, retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation.

(5) Upon application for an owner's certificate of registration, a fee of two dollars (\$2) shall be paid to the county treasurer, one-half ($\frac{1}{2}$) of which fee shall be forwarded by the county treasurer to the registrar of motor vehicles.

(6) Before a registration decal may be applied for pursuant to the laws of this state, the owner must present the owner's certificate of ownership, or copy of completed application therefor, as a prerequisite to completing the application for the registration decal.

History: En. Sec. 2, Ch. 434, L. 1971.

53-1014. Transfer of title or interest. (1) Upon a transfer of any title or interest of an owner or owner in or to a snowmobile, registered under the provisions of this act as hereinbefore required, the person or persons whose title or interest is to be transferred shall write their signatures with pen and ink upon the certificate of ownership issued for such vehicle, in the appropriate space provided upon the reverse side of such certificate, and such signature shall be acknowledged before a notary public.

(2) Within ten (10) days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under this act, to the registrar, who shall file the same upon receipt thereof and no certificate of ownership and certificate of registration shall be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. The registrar of motor vehicles shall collect a fee of two dollars (\$2) for each application for transfer of ownership.

(3) The provisions of subdivision (2) of this section, requiring a transferee to forward the certificate of ownership after endorsement and the certificate of registration to the registrar, shall not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes, but every such dealer shall upon transferring such interest deliver such certificate of ownership and certificate of registration with an application for registration executed by the new owner in accordance with the provisions of this act, and the registrar upon receipt of said certificate of ownership, certificate of registration and application for registration, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien.

History: En. Sec. 3, Ch. 434, L. 1971.

53-1015. Lost or mutilated certificates. In the event any certificate of registration or ownership shall be lost, mutilated or become illegible, the persons to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of one dollar (\$1).

History: En. Sec. 4, Ch. 434, L. 1971.

53-1016. Exemptions. (1) The provisions of this act, with respect to registration and certification of title, shall not apply to snowmobiles owned or used by the United States or another state or any agency

or political subdivision thereof, or any snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than thirty (30) days, or any snowmobile registered in another state of the United States, but to be temporarily used within this state for not more than thirty (30) days. Snowmobiles owned by the state of Montana, or any agency or political subdivision thereof, shall be exempt only from the payment of fees, but shall otherwise comply with all the requirements of this act.

(2) No political subdivisions of this state shall have authority to prescribe further licensing or registration of snowmobiles and no political subdivision shall levy fees or charges for use or operation of snowmobiles within the subdivision.

History: En. Sec. 5, Ch. 434, L. 1971.

53-1017. Report of stolen and recovered snowmobiles. It shall be the duty of the sheriff of every county of the state and of the chief of police or commissioner of police of every city to make immediate report to the registrar of motor vehicles of all snowmobiles reported to him as stolen or recovered, upon forms provided for by the registrar of motor vehicles. Failure on the part of any officer shall be deemed to be misfeasance in office and shall constitute grounds for removal. Upon receipt of such information, the registrar of motor vehicles shall file the same in an index to be known as the "stolen and recovered snowmobile index." It shall also be the duty of the registrar of motor vehicles to file reports of stolen and recovered snowmobiles reported to him from other states. The registrar of motor vehicles shall prepare once a month a list of all snowmobiles stolen or recovered during the previous month and forward a copy of the same to every sheriff, and all police departments in cities of the first, second and third class. Such list shall also be forwarded to the secretary of state, or other proper official, in each state of the United States. Before a certificate of title, as heretofore provided, shall be issued under this act, the motor and serial number on the motor vehicle to be registered shall be checked against the "stolen and recovered snowmobile index."

History: En. Sec. 6, Ch. 434, L. 1971.

53-1018. Operation on public roads and streets. (1) No person shall operate a snowmobile upon a controlled-access highway or facility at any time. Snowmobile operation may be permitted on the roadway or shoulder of any other public road or highway, state highway, county road, or city street located within the boundaries of any municipality, only in the event that said street, road, or highway is drifted or covered by snow to such an extent that travel thereon by other motor vehicles is impractical or impossible, or when the operator is in possession of a written permit for such travel, issued by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways, or upon those streets of a municipality where such operation has been specifically so authorized by a duly enacted municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway, where such crossing is necessary to get to another authorized area of operation. Such crossing shall be made at an angle of approximately ninety degrees (90°) to the direction of the highway, at a place where no obstruction prevents a quick and safe crossing. The snowmobile shall make a complete stop before entering upon any part of the highway or road, and the operator shall yield the right of way to all oncoming traffic.

(3) No snowmobile shall be operated upon a public street or highway when permitted to do so by this act, unless equipped with at least one head lamp and one tail lamp, which shall be lighted at all times during such operation, and unless equipped with a suitable braking device which may be operated by either hand or foot.

(4) The operator of a snowmobile who operates his vehicle upon a public roadway, street or highway when allowed to do so under the provisions of this act shall have in his possession a license to drive a motor vehicle as required by the laws of the state of Montana. An operator who crosses a street, road, or highway, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted, shall not be required to apply for or possess a driver's license under the laws of the state of Montana.

History: En. Sec. 7, Ch. 434, L. 1971.

53-1019. Unlawful operation on streets and highways. It shall be unlawful for any person to drive or operate any snowmobile upon a public street or highway in any one or more of the following manners:

(1) At a rate of speed greater than provided by law for motor vehicles.

(2) While under the influence of intoxicating liquor or narcotics or habit-forming drugs.

(3) In a careless or reckless manner so as to endanger the person or property of another, or to cause injury or damage to either.

(4) Without a lighted head and taillight between the hours of dusk and dawn.

(5) Operating a snowmobile, or permitting such operation, by any person who by reason of age or physical or mental disability is incapable of operating the snowmobile as required for safety under the prevailing circumstances.

History: En. Sec. 8, Ch. 434, L. 1971.

53-1020. Other unlawful operation. No person while operating a snowmobile, shall use the same:

(1) For the purpose of driving, rallying or harassing any of the game animals, game birds, or fur-bearing animals of the state, or any livestock, provided, however, that an owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles and may direct other persons to so manage or drive his livestock.

(2) To discharge a firearm from or upon a snowmobile.

(3) Regulation of snowmobile noise. (a) Except as provided in this section, every snowmobile shall be equipped at all times with noise-suppression devices, including an exhaust muffler, in good working order and in constant operation, adequate to comply with the specifications required by the rules and regulations; provided, that the commission may in its discretion establish separate and different rules and regulations applicable to new snowmobiles sold after a date selected by the commission, which shall not be later than June 30, 1972. In any event, from and after June 30, 1972, no new snowmobile, except snowmobiles designed for competition purposes only, shall be sold, or offered for sale, unless such vehicle is certified by the manufacturer as being able to conform with the sound level limitation of not more than eighty-five (85) decibels on a scale "A" (dBA) at fifteen (15) feet. Sound-pressure levels in decibels shall be measured on "A" scale of a sound-level meter having characteristics defined by American standards association S1, 4-1966 "General Purpose Sound Meter." Measurements shall be made in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" used by the international snowmobile industry association (January, 1969), or with such other standards for measurement of sound level as the commission may adopt.

(b) After a date selected by the commission, but not later than June 30, 1972, no new snowmobile not equipped with noise-suppression devices adequate to comply with the specifications required by the rules and regulations of the commission or the specification set forth in the preceding paragraph, whichever are more restrictive, shall be sold or offered for sale unless a separate placard, identifying that such snowmobile is not so equipped, is conspicuously and permanently affixed thereto.

(c) This section does not apply to organized races or similar competitive events held on (1) private lands, with the permission of the owner, lessee, or custodian of the land, or (2) public lands, with the consent of the public agency having the authority to grant such consent; provided that total sound produced by such event shall not exceed the specifications required by the rules and regulations of the commission after the effective date of the rules and regulations, and provided, that in any event, from and after June 30, 1971, total sound produced by such event shall not exceed (50) decibels on scale "A" (dBA) at any point fifteen (15) feet or more outside the boundaries of the area designated for such event.

(4) Upon a railroad right of way or railroad track, provided, however, it shall not be unlawful for officers or employees of any railroad operating over said tracks from operating snowmobiles thereon.

History: En. Sec. 9, Ch. 434, L. 1971.

53-1021. Accidents involving snowmobiles. The owner or operator of a snowmobile which is involved in any accident, collision, or upset upon a public street or highway where personal injury occurs to any person, or where property damage exceeds one hundred dollars (\$100), shall report the accident or occurrence to a state or local law-enforce-

ment agency responsible for collecting reports of accidents involving motor vehicles.

History: En. Sec. 10, Ch. 434, L. 1971.

53-1022. Enforcement. The following persons may enforce the provisions of this act:

The enforcement officers employed by the state department of fish and game, with respect to violations relating to game animals or birds, discharging firearms, or mufflers.

The sheriffs of the respective counties, and the police officers of cities and towns, within their respective jurisdictions, and the state highway patrol, with respect to any violation of this act upon the public streets or highways.

History: En. Sec. 11, Ch. 434, L. 1971.

53-1023. Penalties. Violations of any section of this act shall be misdemeanors, and punishable by fine or imprisonment or both, as follows:

(1) For any violations occurring upon the public highways, as provided by law for such violations applying to persons owning or operating motor vehicles.

(2) As provided by law for driving, rallying or harassing game animals, game birds or fur-bearing animals of the state.

(3) For any other violation, as provided by law for misdemeanors.

History: En. Sec. 12, Ch. 434, L. 1971.

Repealing Clause

Section 13 of Ch. 434, Laws 1971 read "Sections 53-1001 through 53-1011, R. C. M., 1947, are hereby repealed."

53-1024. Tax on snowmobiles—definitions. As used in this act, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning be intended:

a. "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

b. "Snowmobile" includes any self-propelled vehicle designed primarily for travel on snow or ice or natural terrain which may be steered by wheels, skis, or runners, and which is not otherwise registered or licensed under the laws of the state of Montana.

c. "Owner" shall include every person as defined therein, other than a lien holder or other person having a security interest only, holding record title to a snowmobile and entitled to the use or possession thereof.

History: En. Sec. 1, Ch. 435, L. 1971.

Title of Act

An act providing for the display of tax-paid decals on every snowmobile operated in the state of Montana; for the yearly

issuance of such decals; for a change in the assessment date of snowmobiles; providing penalties for violation of this act; and amending section 84-406, R. C. M. 1947, and providing an effective date.

53-1025. Display of tax-paid decals on snowmobiles required—application and issuance. No snowmobile shall be operated by any person

in the state of Montana unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such tax-paid decal shall be made to the state board of equalization upon forms to be furnished for this purpose, which may be obtained from the board or at the county assessor's office in the county wherein the owner resides, and is to provide for substantially the following information: name of owner, address, registration number, name of manufacturer, model number, make, horsepower, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the board may require. Said application shall be signed by the owner of the snowmobile and transmitted to the board accompanied by a fee of one dollar (\$1). Upon receipt of the application in approved form the board shall issue to the applicant a decal in the style and design prescribed by the board and of a different color than the preceding year, numbered numerically.

History: En. Sec. 2, Ch. 435, L. 1971.

53-1026. Application to be made annually—operation permitted after application for decal. Application must be made to the board for the issuance of tax-paid decals annually. Snowmobiles may be operated between January 1 and January 20 in each year without displaying the current year's decal on the condition that application therefor has been made.

History: En. Sec. 3, Ch. 435, L. 1971.

53-1027. Failure to display decal a misdemeanor—penalty. The failure to display a current tax-paid decal during the time provided in this act shall constitute a misdemeanor, punishable by a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50).

History: En. Sec. 4, Ch. 435, L. 1971.

53-1028. Officers authorized to enforce act. The fish and game commission, enforcement personnel, the sheriffs and their deputies of the various counties of the state, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this act.

History: En. Sec. 5, Ch. 435, L. 1971.

TITLE 54—NARCOTIC DRUGS

Chapter 1. Dangerous Drug Act, 54-129 to 54-138.

CHAPTER 1—DANGEROUS DRUG ACT

- Section 54-129. Definition of terms.
54-130. Authority of the state board of pharmacy to enact regulations, impose fees and designate dangerous drugs.
54-131. Dangerous drugs—persons and preparations exempt from the prohibition.
54-132. Criminal sale of dangerous drugs.
54-133. Criminal possession of dangerous drugs.
54-134. Fraudulently obtaining dangerous drugs.
54-135. Altering labels on dangerous drugs.
54-136. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.
54-137. Alternative sentencing authority.
54-138. Jurisdiction.

54-101 to 54-128. Repealed.

Repeal

Sections 54-101 to 54-128 (Secs. 1 to 26, 28, 30, Ch. 176, L. 1937; Secs. 1 to 3, Ch. 146, L. 1941; Sec. 1, Ch. 12, L. 1949; Secs. 1, 2, Ch. 174, L. 1953; Secs. 1 to 7, Ch. 7,

L. 1955; Sec. 1, Ch. 6, L. 1959), the Uniform Drug Act, was repealed by Sec. 14, Ch. 314, Laws 1969. For present provisions see sec. 54-129 et seq.

54-129. Definition of terms. (a) "Person" includes an individual, partnership, corporation, association, trust or other institution or entity.

(b) "Drug" means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them.

(c) "Depressant drugs" include: Amobarbital, secobarbital, pentobarbital, phenobarbital, barbituric acid, glutethimide, meprobamate, chloral hydrate, paraldehyde, ethchlorvynol, and ethinamate, or any product, derivative, compound or preparation containing any of the above listed drugs.

(d) "Stimulant drugs" include: Amphetamine, dextroamphetamine, mephentermine, methamphetamine and phenmetrazine, or any product, derivative or compound or preparation of the above listed drugs.

(e) "Hallucinogenic drugs" include: Marihuana, lysergic acid diethylamide, psilocybin, dimethyltryptamine, methyltryptamine, peyote and mescaline or any product, derivative, compound or preparation of the above listed drugs.

(f) "Narcotic drugs" include: Opium, morphine, heroin, codeine, ethylmorphine, dihydromorphinone, isonipecaine, methadone and cocaine or any product, derivative, compound or preparation of the above listed drugs.

(g) "Dangerous drug" means any depressant, stimulant, hallucinogenic or narcotic drug.

(h) The terms "manufacture, preparation, cultivation, compounding, or processing" shall include repackaging or otherwise changing the container, wrapper, or labeling of any drug package in furtherance of the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer.

(i) The term "warehousing" means the receipt and storage of goods for compensation prior to final delivery or sale to the ultimate consumer.

(j) The term "wholesaling, jobbing or distribution" means the selling or distribution to any person who is not the ultimate user or consumer of such drug.

(k) "Sell" means to sell, exchange, give or dispose of to another, or to offer or agree to do the same.

(l) "Practitioner" means a physician, dentist, veterinarian, podiatrist or other person permitted by law to prescribe drugs.

(m) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares dangerous drugs, but does not include a pharmacist who compounds dangerous drugs to be sold or dispensed on prescriptions.

(n) Masculine words shall include the feminine and neuter and singular includes the plural.

(o) The term "prescription" shall be given the meaning it has in R. C. M. 1947, section 66-1502 (n).

(p) This act may be cited as the "Montana Dangerous Drug Act."

History: En. Sec. 1, Ch. 314, L. 1969.

NOTE.—The following states have enacted the Uniform Narcotic Drug Act: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming.

Title of Act

An act providing for regulation of the possession and sale of dangerous drugs in the state of Montana; defining dangerous drugs to include depressant, stimulant, hallucinogenic and narcotic drugs and defining certain words and phrases in connection therewith; defining who may lawfully sell and possess dangerous drugs;

providing for the fraudulent obtaining of dangerous drugs or the alteration of labels; providing for the enforcement of unlawful sale and possession; providing for the state board of pharmacy to regulate, license and supervise, and designate other dangerous drugs after proper notice and hearing; amending section 95-302, R. C. M. 1947, to exclude trial jurisdiction in the justices' courts in cases commenced under this act; repealing sections 27-724, 27-725, 54-101 through 54-128 inclusive, 94-35-123, 94-35-148, 94-35-199, R. C. M. 1947.

Dangerous Drug

Defendant was not entitled to have words "and none others" added at end of jury instruction defining dangerous drugs in words of statute. *State v. Dunn*, — M —, 472 P 2d 288.

Jury Instructions

Charge to jury in exact words of subsection (g) was proper and was at most harmless error in absence of evidence that depressant or narcotic was involved. *State v. Dunn*, — M —, 472 P 2d 288.

54-130. Authority of the state board of pharmacy to enact regulations, impose fees and designate dangerous drugs. (a) Registration and licensing. The state board of pharmacy is hereby authorized to

register manufacturers, and to license, regulate and supervise the warehousing, wholesaling, distributing, sale, purchase, dispensing and any other processing of all dangerous drugs, which is necessary to carry out the enforcement of this act.

(b) Fees. The state board of pharmacy is hereby authorized to require registration and license fees in an amount to be fixed by the board, which fees shall not exceed one hundred dollars (\$100) per year.

(c) Dangerous drug designation. Any drug designated by the state board of pharmacy as a dangerous drug because of its depressant, stimulant, hallucinogenic or narcotic effects, after notice, hearing and publication as required by law, shall be added to the appropriate definitions of section [subsection] (c), (d), (e), or (f) of section 1 [54-129] for the purpose of the Montana Dangerous Drug Act.

(d) Penalties. Failure to register or be licensed as provided for shall be a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) or imprisonment in the county jail for not to exceed one (1) year, or both.

History: En. Sec. 2, Ch. 314, L. 1969.

Cross-References

Designation of dangerous drugs, sec. 66-1504.1.

Justices' court jurisdiction, sec. 95-302.

54-131. Dangerous drugs—persons and preparations exempt from the prohibition. (1) The following medicinal preparations are excepted from the designated criminal offenses of sections 4 and 5 [54-132 and 54-133] of this act when combined with therapeutically active or inactive nonnarcotic ingredients:

(a) A preparation which contains not more than 64.8 mg. (1 grain) of codeine or any of its salts, per one fluid ounce, or one avoirdupois ounce.

(b) Any preparation which contains cotarnine, nalorphine, narceine, noscapine, or papaverine in any quantity. These medicinal preparations must contain, in addition to the narcotic drug in it, other medicinal qualities; and be administered, dispensed and sold in good faith as a medicine, not for the purpose of evading this act.

(2) The following persons are excepted from the designated criminal offenses of sections 4 and 5 [54-132 and 54-133] of this act while acting in the ordinary and authorized course of their business, profession, occupation, employment or religious activity and whose activities in connection with dangerous drugs are solely as specified in this section;

(a) Persons regularly engaged in manufacture, preparation, cultivation, compounding and processing who are qualified in conformance with law, in preparing pharmaceutical chemicals or prescription drugs for distribution through branch outlets, wholesale druggists, or by direct shipment, (1) to pharmacies or to hospitals, clinics, public health agencies, long-term care facilities, or practitioners, for dispensing by registered pharmacists upon prescriptions, or for use by or under the supervision of practitioners, or (2) to laboratories or research or educational institutions for their use in research, teaching or chemical analysis.

(b) Suppliers (otherwise qualified in conformance with law) of persons regularly engaged in manufacture, preparation, cultivation, compounding and processing referred to in subsection (a).

(c) Wholesale druggists who maintain establishments in conformance with law and are regularly engaged in supplying prescription drugs (1) to pharmacies, or to hospitals, clinics, public health agencies, long-term care facilities, or practitioners, for dispensing by registered pharmacists upon prescriptions, or for use by or under the supervision of practitioners or (2) to laboratories or research or educational institutions for their use in research, teaching or clinical analysis.

(d) Registered pharmacists who are authorized to dispense dangerous drugs.

(e) Practitioners who prescribe or administer dangerous drugs.

(f) Persons associated with a bona fide educational institution who use dangerous drugs in research, teaching or chemical analysis and not for sale.

(g) A common on [or] contract carrier or warehouseman, whose possession of any dangerous drug is in the usual course of his business or employment as such.

(h) Officers and employees of the state, or a political subdivision of the state, while acting in the course of their official duties.

(i) An employee or agent of any person described in paragraphs (a) through (g) of this subsection, and nurse or other medical technician under the supervision of a practitioner who administers dangerous drugs, while such employee, nurse or medical technician is acting in the course of his employment or occupation and not on his own account.

(j) A person to whom or for whose use any dangerous drug has been prescribed, sold, or dispensed by an authorized practitioner or pharmacist may lawfully possess such drug.

(k) Any bona fide religious organization incorporated under the laws of the state of Montana while transporting, possessing or using peyote (pellote) for religious sacramental purposes.

Nothing in this section shall be construed to prohibit or interfere with the discretion of a practitioner in good faith to prescribe or administer any dangerous drug to a patient for the treatment of a disease or condition according to his needs and to medical practice. Addiction, dependence or habitual use of a dangerous drug shall be deemed a "disease or condition" and the prescription, administration or dispensation of a dangerous drug to relieve conditions incident to such addiction or habitual use shall be deemed "treatment of a disease or condition."

Nothing in this act shall be construed to relieve any person from any requirement prescribed by or under authority of Title 27, R. C. M. 1947.

History: En. Sec. 3, Ch. 314, L. 1969. . . Compiler's Notes

The compiler has inserted the bracketed word "or" in subdivision (2) (g).

54-132. Criminal sale of dangerous drugs. (a) A person commits the offense of a criminal sale of dangerous drugs if he sells, manufactures, prepares, cultivates, compounds or processes any dangerous drug as defined in this act and does not come within the exceptions of section 3 [54-131].

(b) A person convicted of criminal sale of dangerous drugs shall be imprisoned in the state prison for a term not less than one (1) year nor more than life. Any person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

History: En. Sec. 4, Ch. 314, L. 1969.

Nature of Drug

Evidence that victims hallucinated following ingestion of drugs furnished by defendant and described by him as "acid" established dangerous nature of drugs to support conviction, despite absence of proof of exact type of drug, and the possibility that hallucinations might have been flashback from previous trips did not necessarily create reasonable doubt. *State v. Dunn*, — M —, 472 P 2d 288.

Repeal Pending Prosecution

Where defendant was charged with selling narcotics in violation of former section 54-102, and between date of commission of crime and time information was filed legislature repealed former section 54-102 and passed this section of Dangerous Drug Act, such repeal did not bar prosecution under former section since general statutory saving clause, section 43-514, operated to sustain jurisdiction of subject matter in district court. *State ex rel. Huffman v. District Court*, 154 M 201, 461 P 2d 847.

54-133. Criminal possession of dangerous drugs. (a) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug as defined in this act and does not come within the exceptions of section 3 [54-131].

(b) A person convicted of criminal possession of dangerous drugs, other than criminal possession of marihuana and its derivatives as hereinafter provided, shall be imprisoned by imprisonment in the state prison not to exceed five (5) years. Any person convicted of a criminal possession of marihuana or its derivatives in an amount, the aggregate weight of which does not exceed sixty (60) grams of marihuana, or one (1) gram of hashish, shall, for the first offense, be guilty of a misdemeanor and is punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one (1) year, or by both such fine and imprisonment. A person convicted of a second, or subsequent, offense under this subsection is punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one (1) year or in the state prison not to exceed three (3) years or by both such fine and imprisonment.

(c) A person of the age of twenty-one (21) years or under, convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence. Jurisdiction under this section shall be exclusively in the district court.

History: En. Sec. 5, Ch. 314, L. 1969; amd. Sec. 1, Ch. 228, L. 1971.

Amendments

The 1971 amendment inserted "other than criminal possession of marihuana and its derivatives as hereinafter provided" in

the first sentence of subsection (b); added new second and third sentences to subsection (b); redesignated the former second sentence of subsection (b) as the first sentence of subsection (c); added the second sentence to subsection (c); and made minor changes in phraseology.

Effective Date

Section 2 of Ch. 228, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

the statutory presumption that defendant was entitled to deferred sentence. *State v. Simtob*, 154 M 286, 462 P 2d 873.

Constitutionality

This section is not unconstitutionally vague and uncertain due to its failure to require knowledge and intent in relation to possession of dangerous drugs since meaning of term "possession" has been so well defined that it cannot be considered ambiguous. *State ex rel. Glantz v. District Court*, 154 M 132, 461 P 2d 193.

Probable Cause for Arrest

Where relators were arrested and charged under this section, allegation that probable cause did not exist for their arrest without warrant was without merit in regard to three who were present and lived in house where drugs were found; but probable cause did not exist concerning fourth party arrested who was present on premises but did not live there, notwithstanding later finding of drugs on this party, since mere presence in place where search was made without further proof of probable cause was insufficient to justify arrest. *State ex rel. Glantz v. District Court*, 154 M 132, 461 P 2d 193.

Deferred Sentence

Trial court improperly sentenced 21-year-old defendant to three years imprisonment for violation of this section where there was no evidence to overcome

DECISIONS UNDER FORMER LAW**Exclusive Nature of Statute**

Marijuana seized in private residence under search warrant issued by justice of peace was unlawfully seized and warrant was void since, under former section 54-112, only district judge could issue search warrant for narcotics and no search warrant could be issued to search private residence for narcotics. The provisions of former Uniform Drug Act were sole and exclusive provisions governing issuance of search warrants authorizing lawful search

and seizure of narcotic drugs and state's contentions that statute applied only to in rem proceedings to seize and destroy contraband narcotics and did not apply to in personam proceedings against possessor which are governed by criminal code could not be sustained. *State v. Langan*, 151 M 558, 445 P 2d 565, accord, *State v. Kurland*, 151 M 569, 445 P 2d 570 (marijuana inadmissible in criminal prosecution for possession against social guest).

54-134. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug by (a) fraud, deceit, misrepresentation or subterfuge; (b) falsely assuming the title of, or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other persons authorized to possess dangerous drugs; (c) the use of a forged, altered or fictitious prescription; (d) the use of a false name or a false address on a prescription or; (e) the concealment of a material fact.

History: En. Sec. 6, Ch. 314, L. 1969.

54-135. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to a package or receptacle containing a dangerous drug, or otherwise misrepresents the package containing a dangerous drug.

History: En. Sec. 7, Ch. 314, L. 1969.

54-136. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. A person convicted of fraudulently obtaining dangerous drugs or altering the labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed six (6) months.

History: En. Sec. 8, Ch. 314, L. 1969.

54-137. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, fraudulently obtaining dangerous drugs or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs either from the face of the record or by a presentence investigation, may in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than six (6) months nor more than two (2) years.

History: En. Sec. 9, Ch. 314, L. 1969.

54-138. Jurisdiction. The district court shall have exclusive trial jurisdiction over all prosecutions commenced under the Montana Dangerous Drug Act.

History: En. Sec. 10, Ch. 314, L. 1969.

TITLE 55—NEGOTIABLE INSTRUMENTS

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

55-101 to 55-1801. (8401 to 8493, 8495 to 8597) Repealed.

Repeal

These sections (Sec. 4240, Civ. C. 1895; Secs. 5842 to 5934, 5936 to 6037a, Rev. C. 1907; Secs. 8401 to 8493, 8495 to 8597,

R.C.M. 1921), the Uniform Negotiable Instruments Law, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

REVISED CODES OF MONTANA

VOLUME 4

Part 1

1971 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
SECOND REPLACEMENT VOLUME 4 (PART 1)
OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING SECOND REPLACEMENT
VOLUME 4 (PART 1) THROUGH VOLUME 478 PACIFIC
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For Index See Pocket Supplement to Replacement Volume 9

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CHAPTER 3—DISQUALIFICATIONS AND RESTRICTIONS

Section

59-301. Age and citizenship.

59-301. (410) Age and citizenship. No person is capable of holding a civil office in this state, who at the time of his election or appointment is not of the age of nineteen (19) years and a citizen of this state.

History: En. Sec. 960, Pol. C. 1895; re-en. Sec. 342, Rev. C. 1907; re-en. Sec. 410, R. C. M. 1921; amd. Sec. 14, Ch. 240, L. 1971. Cal. Pol. C. Sec. 841.

Amendments

The 1971 amendment lowered the age requirement from 21 to 19 years.

CHAPTER 5—PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS

Section

59-538. Expenses of persons in state service—per diem allowance.

59-514. (455.2) Destruction of old county records, etc.

Cross-References

State examiner's functions transferred,
sec. 82A-903(3)(p).

59-538. Expenses of persons in state service—per diem allowance. Every person engaged in any service in every department of state, except the governor, the lieutenant governor, and the attorney general, state auditor, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, clerk of the supreme court and justices of the supreme court who shall be paid actual and necessary expenses as hereinafter provided exclusive of persons in appointive positions, or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall

be allowed, for the time engaged in such travel, thirteen dollars and fifty cents (\$13.50) per day for such travel within the state of Montana, and for travel outside the state of Montana the sum of twenty-two dollars and fifty cents (\$22.50) per day for meals and other necessary expenses; except that for travel within the District of Columbia the sum of thirty dollars (\$30.00) per day shall be allowed and provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, or section 93-313; provided that nothing herein contained shall be construed as affecting the validity of section 43-310. The governor shall be authorized actual and necessary expenses not to exceed sixty dollars (\$60) per day when engaged in state service away from Helena, Montana. The lieutenant governor, when directed by the governor to engage in state service, the attorney general, state auditor, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, clerk of supreme court and justices of supreme court shall be authorized actual and necessary expenses not to exceed forty dollars (\$40) per day while engaged in state service away from Helena, Montana.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969; amd. Sec. 1, Ch. 10, L. 1971; amd. Ch. 295, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 10 and once by Ch. 295. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 10, Laws of 1971, inserted before the first proviso the exception relating to travel in the District of Columbia.

Chapter 295, Laws of 1971, inserted "the lieutenant governor" near the beginning of the first sentence; deleted a former third proviso excepting elective state officers; added "when engaged in state service away from Helena, Montana" to the end of the second sentence; inserted "The lieutenant governor, when directed by the governor to engage in state service" at the beginning of the third sentence; and inserted "Helena" at the end of the third sentence.

CHAPTER 7—THE FISCAL YEAR—OFFICIAL REPORTS

Section

59-701.1. Reappropriation of valid obligations at end of each fiscal year.

59-701.2. Obligations at fiscal year end shall be encumbered.

59-701.1. Reappropriation of valid obligations at end of each fiscal year. Purchase orders issued and accrued expenses approved by the state controller shall be encumbered at the end of each fiscal year in the state controller's accounts, and are hereby reappropriated for the succeeding fiscal year.

History: En. Sec. 2, Ch. 84, L. 1955; amd. Sec. 1, Ch. 267, L. 1971.

Amendments

The 1971 amendment revised and reworded the section.

59-701.2. Obligations at fiscal year end shall be encumbered. Any valid obligation not paid within the fiscal year shall be encumbered for payment thereof at the end of each fiscal year in the state controller's accounts. An appropriation shall be deemed to be encumbered at the

time and to the extent that a valid obligation against the appropriation is created, except construction contracts, which upon approval of the state controller, may be encumbered for only that portion of the contract for which services or materials have been received by the fiscal year's end.

History: En. Sec. 3, Ch. 84, L. 1955; amd. Sec. 3, Ch. 127, L. 1961; amd. Sec. 2, Ch. 267, L. 1971.

Amendments

The 1971 amendment completely rewrote the section. For previous text, see parent volume.

CHAPTER 9—STATE BOARD OF EXAMINERS TO FIX NUMBER, SALARY AND TERM OF ASSISTANTS TO STATE OFFICERS

(Repealed—Section 3, Chapter 272, Laws of 1971)

59-901, 59-902. Repealed.

Repeal

Sections 59-901 and 59-902 (Secs. 1, 2, Ch. 30, L. 1943; Sec. 2, Ch. 176, L. 1949; Sec. 17, Ch. 251, L. 1953), authorizing the state board of examiners to fix the number, salaries and terms of assistants to state officers, were repealed by Sec. 3,

Ch. 272, Laws 1971. Sec. 6, Ch. 272, Laws 1971 provided that repeal be effective upon the date the governor signs an executive order implementing chapter 2 of Title 82A, or on December 31, 1972, whichever occurs first.

CHAPTER 10—VACATIONS OF EMPLOYEES

Section

59-1001. Annual vacation leave.

59-1002. Accumulation of leave.

59-1008. Sick leave.

59-1009. Observance of holiday falling on an employee's day off.

59-1001. Annual vacation leave. (1) Each employee of the state, or any county or city thereof, who is in continuous employment and service of the state, county or city thereof, is entitled to and shall earn annual vacation leave credit from the first full calendar month of employment. However, employees are not entitled to any leave with full pay until they have worked continuously for a period of twelve (12) calendar months. Vacation credits shall be earned in accordance with the following schedule:

(a) from one (1) month through ten (10) years of employment at the rate of one and one-quarter ($1\frac{1}{4}$) working days for each month of service;

(b) from eleven (11) years through fifteen (15) years of employment at the rate of one and one-half ($1\frac{1}{2}$) working days for each month of service;

(c) from sixteen (16) years through twenty (20) years of employment at the rate of one and three-fourths ($1\frac{3}{4}$) working days for each month of service;

(d) after twenty (20) years of employment at the rate of two (2) working days for each month of service.

History: En. Sec. 1, Ch. 131, L. 1949; Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, 1971.

Amendments

The 1971 amendment deleted "for a period of one (1) year from the date of employment" before "is entitled to" in the first sentence; substituted "shall earn annual vacation leave credit from the first full calendar month of employment" at the end of the first sentence for "shall be granted annual vacation leave with full pay"; inserted the second sentence; sub-

stituted "one (1) month through" at the beginning of subdivision (a) for "one (1) year to"; substituted "eleven (11) years through" at the beginning of subdivision (b) for "ten (10) years to"; substituted "sixteen (16) years through" at the beginning of subdivision (c) for "fifteen (15) years to"; and made minor changes in phraseology.

59-1002. Accumulation of leave. Annual vacation leave may be accumulated to a total not to exceed thirty (30) working days as of the last day of any calendar year.

History: En. Sec. 2, Ch. 131, L. 1949; amd. Sec. 2, Ch. 350, L. 1969; amd. Sec. 2, Ch. 121, L. 1971.

Amendments

The 1971 amendment added "as of the last day of any calendar year" at the end of the section.

Effective Date

Section 3 of Ch. 121, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

59-1008. Sick leave. (1) An employee of the state of Montana, or of any county or city thereof, shall be granted sick leave with full pay at the rate of one (1) working day for each month of service without restriction as to the number of working days he may accumulate.

(2) He may not accrue sick leave during a leave of absence without pay, the duration of which exceeds fifteen (15) days. He is entitled to sick leave under the provisions of this act only after being continuously employed for ninety (90) days, upon the completion of which he is entitled to credit for sick leave earned during that period.

(3) Upon separation from service as an employee of the state of Montana or of any county or city thereof, the employee is entitled to a lump-sum payment equal to one-fourth ($\frac{1}{4}$) of the pay attributed to his accumulated sick leave. The pay attributed to his accumulated sick leave shall be computed on the basis of the employee's salary at the time the sick leave accrued. Accrual of sick leave for the purposes of the lump-sum payment provided for in this subsection shall begin when this act becomes effective, and the payment therefor, shall be the responsibility of the state of Montana, or of any county or city thereof, wherein the sick leave accrues. However, no employee forfeits any rights or benefits he has previously accrued with respect to sick leave.

(4) An employee of the state of Montana or of any county or city thereof who receives a lump-sum payment pursuant to this act and who is again employed by the state of Montana or by a county or city thereof may not be credited with any sick leave for which he has previously been compensated.

(5) The department of administration of the state of Montana or of any county or city thereof, is responsible for the proper administration of sick leave and shall promulgate such rules and regulations as it deems necessary to implement the uniform administration of sick leave and the prevention of its abuse. When promulgated these rules and regulations

are effective as to all employees of the state of Montana or any county or city thereof.

(6) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this act.

History: En. 59-1008 by Sec. 1, Ch. 93, **Title of Act**
L. 1971.

An act adding new section 59-1008, R. C. M. 1947, to provide uniform sick leave benefits for public employees.

59-1009. Observance of holiday falling on an employee's day off.
Any employee of the state of Montana, or any county or city thereof, who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, shall be entitled to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off.

History: En. Sec. 1, Ch. 108, L. 1971. by public employees when a holiday falls on the employee's day off.

Title of Act

An act to provide for holiday observance

CHAPTER 11—FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

59-1105. Contribution account.

Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(d).

TITLE 60—OIL AND GAS

Chapter

1. Conservation of oil and gas—commission, 60-131.1 to 60-131.3, 60-131.6, 60-131.9.

CHAPTER 1—CONSERVATION OF OIL AND GAS—COMMISSION

Section

- 60-131.1. Operation of pool as unit—commission to hold hearing—notice.
- 60-131.2. Commission order—criteria.
- 60-131.3. Terms and conditions of order—requirements.
- 60-131.6. Units established by previous order may be included—manner of inclusion.
- 60-131.9. Property rights—operator's lien—perfection of lien.

60-125. Oil and gas conservation commission, etc.

Cross-References

Conservation commission continued in department of natural resources and conservation, sec. 82A-1508.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

60-131.1. Operation of pool as unit—commission to hold hearing—notice. The commission, upon the application of persons owning leasehold interests underlying sixty per cent (60%) of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one or more pools or parts thereof in a field, for pressure maintenance or secondary recovery purposes as to oil or oil and gas; or to increase ultimate recovery or to prevent waste of gas from pools or portions of pools where gas only is produced.

(1). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 33, L. 1969; amd. Sec. 1, Ch. 150, L. 1971.

Amendments

The 1971 amendment inserted "as to oil or oil and gas" at the end of the clause in the first paragraph relating to pres-

sure maintenance and secondary recovery purposes; added "or to increase ultimate recovery or to prevent waste of gas from pools or portions of pools where gas only is produced" at the end of the first paragraph; and made minor changes in phraseology and style.

60-131.2. Commission order—criteria. The commission shall make an order providing for the unit operation of a pool or pools or part thereof if it determines, based on evidence presented at such hearing, that:

(1). * * * [Same as parent volume.]

(2) The value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected exceeds the estimated additional cost incident to conducting such operations; and

(3). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 33, L. 1969; amd. Sec. 2, Ch. 150, L. 1971.

Amendments

The 1971 amendment inserted "or, as to gas pools only, the value of the economies to be effected" in subdivision (2).

60-131.3. Terms and conditions of order—requirements. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) A description of the pool or pools or parts thereof to be so operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. In the event the unit is formed solely for production of gas, no spacing unit on which is located a well producing or capable of producing gas on the effective date of this act, shall be included in the unit area without the written consent of the majority in interest of the working interest owners of such spacing unit and well.

(2) to (4). * * * [Same as parent volume.]

(5) A provision providing how the costs of unit operations, including overhead and capital investments, shall be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the then current prime rate plus two per cent (2%) for such service. Recovery of the money advanced, plus interest, shall be limited to, and only shall be recoverable from, such owners' share of production. Such recovery shall be as follows:

(a)(1) In the case of a field producing oil, or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of such owners' average actual rate of production during the eighteen (18) months immediately preceding the effective date of the unit. For purposes of this subsection, the term "primary reserves" means the oil or gas which would be produced from the unitized pool or pools or a result of the natural energy therein and without the introduction of a secondary recovery program.

(2) During the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from one hundred per cent (100%) of such owners' share of production.

(b) In the case of a field producing only gas, the recovery shall be from one hundred per cent (100%) of such owners' share of production.

(6). * * * [Same as parent volume.]

(7) A provision whereby the unit operator, after having operated for a minimum period of two years, can be challenged by any other owner in the unit, and such challenging owner may succeed to the unit operations upon a showing that (a) he can operate more efficiently and economically than the present operator; (b) he is qualified and financially responsible; (c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved such challenging owner becoming unit operator; and (d) the challenged operator does not initiate the conditions of operations of the challenging owner within sixty (60) days of the challenged operator's receipt of such conditions of operations.

(8) and (9). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 33, L. 1969;
amd. Sec. 3, Ch. 150, L. 1971.

Amendments

The 1971 amendment added the second sentence to subdivision (1); redesignated former subdivisions (5)(a) and (5)(b) as

subdivisions (5)(a)(1) and (5)(a)(2), respectively; inserted "In the case of a field producing oil, or oil and gas" at the beginning of subdivision (5)(a)(1); inserted a new subdivision (5)(b); and made minor changes in phraseology.

60-131.6. Units established by previous order may be included—manner of inclusion. The commission, by an order, may provide for the unit operation of a pool or pools or parts thereof that embrace a unit established by an order of the commission made prior to the effective date of this amendment to Title 60, chapter 1, Revised Codes of Montana. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the tracts included in such previously established unit area in the same proportions as those specified in the previous order. Any new owner whose interest by such order is added to the unit area and who becomes liable for his proportionate share of the costs of unit operations will not be liable for any unit operating costs incurred prior to such person's entry in the unit. At the time such interest is included in the unit, an equipment inventory will be made in order to charge such newly committed interest with its proportionate share of capital investment at its then value. An oil-in-storage inventory will be taken immediately prior to adding the newly committed interest.

History: En. Sec. 6, Ch. 33, L. 1969;
amd. Sec. 4, Ch. 150, L. 1971.

Amendments

The 1971 amendment substituted "prior to the effective date" for "subsequent to the effective date" in the first sentence.

60-131.9. Property rights—operator's lien—perfection of lien. That portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations, except that the operator of the unit shall, subject to section 60-131.3, subdivision (5)(a)(1), have a first and prior lien upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of developing and operating the unit area. Such lien may be perfected and enforced in the same manner as provided in Title 45, chapter 5, Revised Codes of Montana, 1947, as amended. Upon demand by any owner of working interest in any tract to which gas has been allocated, the unit operator shall deliver such allocated share of gas to the owner in kind; but the operator and the other owners of interest shall not be required to bear the cost of providing additional facilities for the delivery of such gas.

History: En. Sec. 9, Ch. 33, L. 1969;
amd. Sec. 5, Ch. 150, L. 1971.

Amendments

The 1971 amendment changed the re-

ference in the first sentence to section 60-131.3 in accordance with the amendment of that section; and added the third sentence.

Effective Date

Section 6 of Ch. 150, Laws 1971 provided the act should be in effect from

and after its passage and approval. Approved March 1, 1971.

CHAPTER 2—PETROLEUM PRODUCTS—STANDARDS—REGULATION
OF MANUFACTURE AND DISTRIBUTION

60-203.2. Enforcement of chapter—rules and regulations.**Cross-References**

Functions transferred to department of business regulation, sec. 82A-403(3).

TITLE 61—PARENT AND CHILD

Chapter

1. Parent and child—children by birth and by adoption, 61-112.2.
2. Adoption, 61-203.

CHAPTER 1—PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION

Section

61-112.2. Limitation on amount of recovery.

61-112.2. Limitation on amount of recovery. The recovery shall be limited to the actual damages in an amount not to exceed three hundred dollars (\$300.00) in addition to taxable court costs, and a reasonable attorney's fee to be set by the court, not to exceed one hundred dollars (\$100). The right to recover attorney fees as provided by this section shall be limited to a person bringing an action under section 61-112.1, R. C. M., 1947.

History: En. Sec. 2, Ch. 195, L. 1957;
amd. Sec. 1, Ch. 178, L. 1971.

Amendments

The 1971 amendment added the provision for an attorney's fee, including the second sentence.

CHAPTER 2—ADOPTION

Section

61-203. Who may adopt.

61-203. Who may adopt. The following persons are eligible to adopt a child:

- (1) A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the child.
- (2) An unmarried person who is at least nineteen (19) years old.
- (3) A married person at least nineteen (19) years old who is legally separated from the other spouse.
- (4) In the case of an illegitimate child, its unmarried father or mother.

History: En. Sec. 3, Ch. 240, L. 1957;
amd. Sec. 15, Ch. 240, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subdivisions (2) and (3) from 21 to 19 years.

TITLE 62—PARKS AND PUBLIC RECREATION

CHAPTER 4—DEVELOPMENT OF OUTDOOR RECREATIONAL RESOURCES

62-404. Advisory and planning committee—composition and functions.

Cross-References

Advisory and planning committee abolished, sec. 82A-1511(2).

CHAPTER 5—HORSE RACING

62-501. Horse racing commission created, etc.

Cross-References

Commission renamed and continued in department of professional and occupational licensing, sec. 82A-1602(13).

TITLE 64—PERSONS AND PERSONAL RIGHTS

Chapter

1. Persons, minors, adults and those of unsound mind, 64-101.
2. Personal rights—libel and slander—protection of personal relations, 64-207.1.
3. Freedom from discrimination, 64-301 to 64-303.

CHAPTER 1—PERSONS, MINORS, ADULTS AND THOSE OF UNSOUND MIND

Section

64-101. Minors and adults defined.

64-101. (5673) Minors and adults defined. Minors are:

1. Males under nineteen (19) years of age;
2. Females under nineteen (19) years of age. All other persons are adults.

History: En. Secs. 10-11, Civ. C. 1895; re-en Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R. C. M. 1921; amd. Sec. 16, Ch. 240, L. 1971. Cal. Civ. C. Sec. 25. Field Civ. C. Sec. 11.

Amendments

The 1971 amendment changed the age of minority from 21 for males and 18 for females to 19 in both instances.

CHAPTER 2—PERSONAL RIGHTS—LIBEL AND SLANDER— PROTECTION OF PERSONAL RELATIONS

Section

64-207.1. Notice in writing to publisher of libelous or defamatory matter—opportunity to correct—defense and mitigation of damages.

64-207.1. Notice in writing to publisher of libelous or defamatory matter—opportunity to correct—defense and mitigation of damages. Before any civil action shall be commenced on account of any libelous or defamatory publication in any newspaper, magazine, periodical, radio or television station, or cable television system, the libeled person shall first give those alleged to be responsible or liable for the publication a reasonable opportunity to correct the libelous or defamatory matter. Such opportunity shall be given by notice in writing specifying the article and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty. The first issue of a newspaper, magazine or periodical published after the expiration of one week from the receipt of such notice shall be within a reasonable time for correction. In the case of radio and television stations and cable television systems a broadcast made at the same time of day as the broadcast complained of and of at least equal duration, which is made within seven (7) days following receipt of such notice shall be within a reasonable time for correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction shall consti-

tute a correction; otherwise the publication of the libeled person's statement of the true facts, or so much thereof as shall not be libelous of another, scurrilous, or otherwise improper for publication, published as his statement, shall constitute a correction within the meaning of this section. If it shall appear upon trial that the publication was made under honest mistake or misapprehension, then a correction, timely published, without comment, in a position and type as prominent as the alleged libel, or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration, shall constitute a defense against the recovery of any damages except actual damages, as well as being competent and material in mitigation of actual damages to the extent the correction published does so mitigate them.

History: En. Sec. 1, Ch. 159, L. 1961;
amd. Sec. 1, Ch. 58, L. 1971.

Repealing Clause

Section 2 of Ch. 58, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Amendments

The 1971 amendment inserted references to cable television systems in the first and fifth sentences; and made a minor change in punctuation.

CHAPTER 3—FREEDOM FROM DISCRIMINATION

Section

64-301. Freedom from discrimination as civil right—employment—public accommodations.

64-302. Definition of terms.

64-303. Discrimination as misdemeanor.

64-301. Freedom from discrimination as civil right—employment—public accommodations. The right to be free from discrimination because of race, creed, color, sex, or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(1) and (2). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 201, L. 1965;
amd. Sec. 1, Ch. 39, L. 1971.

Amendments

The 1971 amendment inserted "sex" in the introductory paragraph.

64-302. Definition of terms. Terms used in this act shall have the following definitions:

(1) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one (1) or more natural persons, partnerships, associations, organizations, corporations, co-operatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage or amusement.

(2) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction or unequal treatment or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage,

custom, presence, frequenting, dwelling, staying or lodging in any place of public resort, accommodation, assemblage or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed, sex, or color.

(3) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed, sex, or color, to be treated as not welcome, accepted, desired or solicited.

(4) "National origin" includes "ancestry."

(5) "Any place of public resort, accommodation, assemblage or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal service, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates or assembles for amusement, recreation of public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed.

History: En. Sec. 2, Ch. 201, L. 1965;
amd. Sec. 2, Ch. 39, L. 1971.

the ends of paragraphs (2) and (3); and
made minor changes in style and punctuation.

Amendments

The 1971 amendment inserted "sex" near

64-303. Discrimination as misdemeanor. Every person who denies to any other person because of race, creed, color, sex, or national origin the right to employment; (1) by refusing to hire, (2) by discharging, (3) by barring from employment, or (4) by discriminating against such person in compensation or in other terms or conditions of employment; and

every person who denies to any other person because of race, creed, color, sex, or national origin the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 201, L. 1965;
amd. Sec. 3, Ch. 39, L. 1971.

Amendments

The 1971 amendment inserted "sex" in two places; and made minor changes in style.

TITLE 66—PROFESSIONS AND OCCUPATIONS

Chapter

4. Barbers and barbershops, 66-411.
6. Chiroprody—regulation of practice, 66-603.
8. Cosmetology (beauty shops) regulation, 66-803, 66-815.
9. Dentistry—regulation of practice, 66-905.
10. Medicine—regulation of practice, 66-1012, 66-1013, 66-1023, 66-1025, 66-1027 to 66-1030.
13. Optometry—regulation, 66-1307, 66-1318.
15. Pharmacy—regulation of sale of drugs and medicines, 66-1501, 66-1502, 66-1504, 66-1506 to 66-1509, 66-1521.
18. Public accountants—regulation, 66-1819, 66-1820.
19. Real estate license act, 66-1929.
22. Veterinary medicine—regulation of practice, 66-2204.
23. Engineers and land surveyors, 66-2326, 66-2337, 66-2344.
25. Physical Therapists Practice Act, 66-2502.
27. Morticians and funeral directors, 66-2708.
31. Nursing homes and administrators, 66-3103.
32. Psychologists—licensing and regulation, 66-3201 to 66-3214.

CHAPTER 1—ARCHITECTURE—REGULATION OF PRACTICE

66-101. (3229) Appointment of board of architectural examiners.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(3).

CHAPTER 4—BARBERS AND BARBERSHOPS

Section

66-411. Fees to be paid by apprentices, students, barbers and barbershops.

66-406. (3228.24) Board of barber examiners, etc.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(5).

66-411. (3228.29) Fees to be paid by apprentices, students, barbers and barbershops. (1) * * * [Same as parent volume.]

(2) Each person registered as a barber or barber apprentice, shall on or before the first day of July of each year pay a license fee of five dollars (\$5) for the renewal of his or her certificate of registration, and if any barber shall fail to have such certificate renewed on or before the first day of July of each year such barber shall upon the renewal of said certificate of registration pay a penalty, or a restoration fee of ten dollars (\$10), in addition to the regular fee of five dollars (\$5) provided for herein, and if a certificate of registration is not renewed within one (1) year after date of expiration thereof, such barber shall not be entitled to have such certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for by this section. Provided,

further, however, that physically handicapped men and women, trained for the barber profession by the state bureau of civilian rehabilitation and certified by that department as having successfully completed a nine (9) months' course in a reputable barber college will not be required to pay any fees, but will for a period of one (1) year immediately following their training be exempted from all except the sanitary provisions of the barber act, or any of its amendments, and provided, further, that no other or additional license, or fee, shall be imposed upon barbers, or barber apprentices, by any municipality or other subdivision of the state of Montana.

(3) In addition to the fees and charges now provided by existing law, all barbershops heretofore established, and which have been under the inspection of the board of barber examiners, shall pay an annual license fee of five dollars (\$5). Barbershops hereafter established shall pay an initial inspection fee of twenty dollars (\$20) for the first year or portion thereof, and shall pay an annual license fee of five dollars (\$5).

(4). * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 87, L. 1971.

Amendments

The 1971 amendment increased the fees specified in subsection (3) from \$3.00, \$15.00 and \$3.00 to \$5.00, \$20.00 and \$5.00 respectively.

CHAPTER 5—CHIROPRACTIC—REGULATION OF PRACTICE

66-501. (3138) State board of chiropractic examiners created, etc.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(7).

CHAPTER 6—CHIROPODY—REGULATION OF PRACTICE

Section

66-603. Chiropody examiners—examinations—qualifications—schools—fees—nonresident practitioners.

66-603. (3154.3) Chiropody examiners—examinations—qualifications—schools—fees—nonresident practitioners. (1) There is hereby created a state board of chiropody medical examiners consisting of one physician to be selected at its annual meeting by the state board of medical examiners from its membership, the secretary of the state board of medical examiners, and two (2) chiropodists to be selected and to serve as hereinafter provided. The Montana association of chiropodists shall select six (6) chiropodists from its membership, who shall be residents of and shall have engaged in the active practice of chiropody for at least two (2) years in this state, and shall be of high integrity and ability. Within thirty (30) days from and after the selection of said six (6) chiropodists as aforesaid, the governor of Montana shall appoint three (3) of their number and so designate the term of office of each, that the term of office of one member shall expire in one (1) year, one in two (2) years,

and one in three (3) years, from date of appointment; annually thereafter, the governor shall appoint one member who shall be a licensed chiroprapist possessing the qualifications hereinbefore mentioned who shall serve for a period of three (3) years or until his successor shall have been appointed by the governor. Should any vacancy arise on aforesaid board before the expiration of the term of office of any of the chiroprapist members of said board, such vacancy shall be filled by appointment by the governor within thirty (30) days, such appointee to possess the qualifications heretofore stated, and to be selected from those remaining of the said six (6) chiroprapists theretofore selected by the Montana association of chiroprapists unless said number of selected chiroprapists shall have been exhausted.

(2) Examinations shall be held semiannually at such places and time as the state board of chiroprapody medical examiners shall direct. On and after the date of the taking effect of this act, all persons who may wish to begin practice of chiroprapody in this state, shall make application upon a blank form authorized and furnished by said state board of medical examiners, for a license to practice chiroprapody. This application shall be granted to such applicants, after they shall have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent and of having at least two (2) years of instruction in an accredited school of chiroprapody recognized as being in good standing by the Montana board of chiroprapody medical examiners, but after June 1st, 1941, no school of chiroprapody shall be accredited by said board which does not require for graduation four (4) years of instruction in the study of chiroprapody. All chiroprapists, actively engaged in the practice of chiroprapody one (1) or more years and licensed by the state board of medical examiners, prior to April 1st, 1939, whether meeting these requirements or not, shall, upon furnishing proof thereof to said board of chiroprapody medical examiners be entitled to a license without examination. A license without written examination may be issued to chiroprapists of other states maintaining equal statutory requirements for the practice of chiroprapody and extending the same reciprocal privilege to this state provided further that they have had a valid license for at least two (2) years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars (\$50) to the secretary of the board of medical examiners.

History: En. Sec. 3, Ch. 2, L. 1923; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963; amd. Sec. 1, Ch. 168, L. 1971.

after "satisfactory proof" in the third sentence of subsection (2); and made minor changes in phraseology and style.

Amendments

The 1971 amendment deleted "of being at least twenty-one (21) years of age"

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(6).

CHAPTER 8—COSMETOLOGY (BEAUTY SHOPS) REGULATION

Section

66-803. Requirements for practicing or teaching cosmetology or operating a school of cosmetology.

66-815. Fees.

66-803. (3228.3) Requirements for practicing or teaching cosmetology or operating a school of cosmetology. Before anyone may practice or teach cosmetology, or any person, firm, or copartnership, or corporation may operate a school of cosmetology, such person, firm, or copartnership or corporation must obtain a license of certificate of registration from the state board as hereinafter provided. To be eligible to take the examination to practice cosmetology the applicant must not be less than eighteen (18) years of age and a graduate of the eighth grade school and must be of good moral character. Such applicant must have completed a continuous course of study of at least two thousand (2,000) hours in a registered beauty school, which course of study has been distributed over a period of not less than ten (10) months or more than twelve (12) months, and has received a diploma from said beauty school, or must have completed the course of study in cosmetology prescribed by the state board of education, ex officio regents of the university of Montana, for northern Montana college. Such person so qualified must file with the secretary of the state board, a written application to take such examination accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the state board, and shall deposit with the secretary of the said board, the required examination fee and pass an examination as to his or her fitness to practice cosmetology.

Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:

(1) Be a graduate of high school or possess an equivalent of a high school diploma recognized by the state superintendent of public instruction.

(2) Meet the following requirements:

(a) and (b). * * * [Same as parent volume.]

The applicant must qualify by filing an application as prescribed by the board and by taking and passing the examination prescribed and given by the board. The license must be renewed annually as provided in section 66-816, R. C. M. 1947.

Anyone failing twice to pass an examination may not apply to retake the examination:

(1) Sooner than six (6) months after the date of the second failure; or

(2) Until he has taken two hundred (200) hours additional teacher training at a registered school of cosmetology approved by the board.

Provided, further, the board may grant to graduates of registered schools of this state upon the payment of a fee of two dollars (\$2) a temporary license authorizing such graduates to practice as an operator under the supervision of a licensed cosmetologist, in the practice of hairdressing and beauty culture, for a period of not to exceed ninety (90) days, or until the next examination is held by the board. No such

temporary license shall be issued except upon the presentation by the applicant of a certificate of graduation from a registered school of the state of Montana, and such temporary licenses shall not be renewable.

No person, firm or copartnership, or corporation shall operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the state board. Application for such certificate shall be filed with such board on such form as the board shall prescribe.

No teacher or student teacher shall be permitted to practice cosmetology on the public in a school. Any school that enrolls student teachers for a course of student teacher training shall not have at any one (1) time more than one (1) student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

No school for teaching cosmetology shall be granted a certificate of registration unless it complies, or can comply, with the following requirements:

(1) to (7). * * * [Same as parent volume.]

(8) The state board shall require of the person, firm, copartnership, or corporation operating a school to furnish a good and sufficient bond in the amount of five thousand dollars (\$5,000) and in a form and manner to be prescribed by the board.

(9) and (10). * * * [Same as parent volume.]

If a licensee shall contract a communicable disease, endangering the public health, the board shall, upon proof of same, cancel or suspend his or her license until such time as said licensee can secure a physician's certificate showing that such licensee is free from a communicable disease.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971.

Amendments

The 1971 amendment deleted from the first group of numbered subdivisions a subdivision (1) reading: "Be twenty-one (21) years of age or older"; redesignated former subdivisions (2) and (3) as subdivisions (1) and (2), respectively; and made minor changes in style.

66-804. (3228.4) Creation of state examining board of cosmetology, etc.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(8).

66-815. (3228.15) Fees. All fees, licenses and certificates of registration shall be paid to the Montana state examining board of cosmetology not to exceed the following respective amounts as may be prescribed by the board. Each student enrolling in a registered cosmetology school shall pay a registration fee of three dollars and fifty cents (\$3.50) to the Montana state examining board of cosmetology. Each applicant for examination to practice shall pay at the time of such application a fee of twenty dollars (\$20). Each applicant for examination who is a graduate from a cosmetology school of this state may pay a fee of four dollars (\$4) for a temporary license to practice as an operator in accordance with the provisions of this act. Each applicant for examination to teach shall pay at

the time of such application a fee of thirty dollars (\$30). Each person practicing cosmetology as an operator shall pay a fee of six dollars (\$6) for the issuance of a license. Each applicant for a manager-operator license shall pay a fee of ten dollars (\$10) for the issuance of such a license. Each applicant for itinerant license as a cosmetologist shall pay a fee of fifty dollars (\$50). Every person, firm, copartnership or corporation owning, operating or conducting a cosmetological salon shall pay the sum of ten dollars (\$10) for the issuance of the certificate of registration. Each person teaching or instructing cosmetology shall pay a fee of ten dollars (\$10) for the issuance of a license. Every person, firm, copartnership or corporation owning, operating or conducting a school of cosmetology shall pay the sum of fifty dollars (\$50) for a certificate of registration. Every person, firm, copartnership or corporation owning, operating or conducting an advanced school of cosmetology shall pay the sum of fifty dollars (\$50) for a certificate of registration. Every person, firm, copartnership or corporation owning, operating or conducting a teacher-training unit in a school of cosmetology shall pay the sum of fifty dollars (\$50) for a certificate of registration. Duplicate licenses or certificates of registration shall be issued upon payment of two dollars (\$2) and proof of necessity. Such license and registration fees shall be paid annually in advance to the Montana state examining board of cosmetology. No other or additional license or registration fee shall be imposed by any municipal corporation or other political subdivision of the state of Montana for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. [Sec. 1,] Ch. 131, L. 1963; amd. [Sec. 1,] Ch. 324, L. 1971.

Amendments

The 1971 amendment substantially rewrote this section and generally increased the fees. For previous text, see parent volume.

CHAPTER 9—DENTISTRY—REGULATION OF PRACTICE

Section

66-905. Dentistry examinations—application—contents—fees—undergraduate examination—regulations for examinations—notice—scope of examination—dentist certificates—fee—form—retention and inspection of examination papers.

66-901. (3115.1) State board of dental examiners, etc.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(9).

66-905. (3115.5) Dentistry examinations—application—contents—fees—undergraduate examination—regulations for examinations—notice—scope of examination—dentist certificates—fee—form—retention and inspection of examination papers. (1) to (5). * * * [Same as parent volume.]

(6) Any applicant failing to pass his first examination before the board may, at any subsequent meeting of said board held for the purpose of examining candidates, if otherwise qualified, take subsequent examinations upon payment of the fee of twenty-five dollars (\$25) for each such examination.

History: En. Sec. 5, Ch. 48, L. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971.

Amendments

The 1971 amendment deleted former subsection (6); and redesignated former subsection (7) as subsection (6).

CHAPTER 10—MEDICINE—REGULATION OF PRACTICE

Section

- 66-1012. Practice of medicine defined—exemptions from licensing requirements.
- 66-1013. State board of medical examiners—qualifications and appointment.
- 66-1023. Practice authorized by certificate—physician's certificate.
- 66-1025. Qualifications for licensure—physician's certificates, reciprocity and endorsement.
- 66-1027. Qualifications for licensure—limitations.
- 66-1028. Approved medical school.
- 66-1029. Approved internship.
- 66-1030. Approved residency.

66-1012. Practice of medicine defined—exemptions from licensing requirements. (1). * * * [Same as parent volume.]

(2) Nothing herein shall be construed to prohibit, or to require a license hereunder with respect to, any of the following acts:

(a) to (e). * * * [Same as parent volume.]

(f) the practice of osteopathy under the conditions and limitations defined in sections 66-1401 to 66-1413, inclusive, of the Revised Code of Montana, 1947, as amended or as hereafter amended, for those doctors of osteopathy who do not receive a physician's certificate under this act;

(g) to (m). * * * [Same as parent volume.]

Provided, however, that all licensees in this subsection (2) designated or referred to, who are licensed to practice a limited field of healing arts, shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses, and shall not use the title M.D., or any word or abbreviation to indicate, or to induce others to believe that he or she is engaged in the diagnosis or treatment of persons afflicted with disease, injury or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971.

Amendments

The 1971 amendment substituted "in sections 66-1401 to 66-1413, inclusive, of the Revised Code of Montana, 1947, as

amended or as hereafter amended, for those doctors of osteopathy who do not receive a physician's certificate under this act" at the end of subdivision (2) (f) for "by the laws of this state as now or hereafter enacted."

66-1013. State board of medical examiners—qualifications and appointment. There is hereby created the Montana state board of medical examiners, herein referred to as the board, which shall consist of seven (7) members, to be appointed by the governor, with the advice and consent of the senate, as herein provided, and to have the qualifications herein prescribed. Upon the taking effect of this act, the state board of medical examiners, as constituted under the laws of this state immediately prior thereto, is hereby abolished but the members thereof shall constitute

the initial board under this act and the respective terms of such members shall extend through and expire on September 1 of the year during which their respective terms, as determined by their appointment under such prior law, would have expired. The terms of their successors shall be so arranged as to succeed the present incumbents as their terms expire. The board shall be comprised at all times of six (6) members having the degree of doctor of medicine, and one (1) member having the degree of doctor of osteopathy, all of whom shall be citizens of the United States and shall have been licensed and shall have practiced medicine in this state for at least five (5) years, not more than one (1) of whom, except for the member having the degree of doctor of osteopathy, shall be from the same county to ensure reasonable representation on said board from the several parts of the state, and, all of whom shall have been residents of this state for at least five (5) years. After the effective date of this act the governor shall appoint a person, who holds the degree of doctor of osteopathy and is licensed under this act, to the vacancy which occurs on the board after July 1, 1972; and the five (5) year requirement of practice and residency shall be waived for this initial appointment. However, if no person holding the degree of doctor of osteopathy is licensed under this act as of July 1, 1972, then a person holding the degree of doctor of medicine shall be appointed, and a person holding the degree of doctor of osteopathy shall be appointed to the board as soon as such a person becomes licensed under this act, is willing to serve, and a subsequent vacancy occurs. All vacancies occurring shall be filled by appointment or reappointment by the governor with the advice and consent of the senate. Appointments made when the senate is not in session shall take effect immediately, and may be confirmed at the next ensuing session of the senate. Each member of the board shall, before he enters upon the duties of his office, take an oath or affirmation to support the constitution of the United States and of the state of Montana and faithfully to perform the duties of the office upon which he is about to enter. Members of the board shall remain in office until their successors have been appointed. A member of the board may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence or unprofessional or dishonorable conduct.

History: En. Sec. 4, Ch. 338, L. 1969; amd. Sec. 2, Ch. 203, L. 1971.

Amendments

The 1971 amendment changed the fourth sentence so as to substitute a doctor of osteopathy for one of the seven doctors of medicine; inserted "except for the member having the degree of doctor of osteopathy" before "shall be from the

same county" in the fourth sentence; and inserted new fifth and sixth sentences, relating to the initial appointment of a doctor of osteopathy.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(15).

66-1023. Practice authorized by certificate—physician's certificate. The physician's certificate, which may be issued only to citizens of the United States, authorizes the holder to perform one or more of the acts embraced in section 66-1012, R. C. M. 1947, in a manner reasonably consistent with his training, skill and experience.

History: En. Sec. 14, Ch. 338, L. 1969;
amd. Sec. 3, Ch. 203, L. 1971.

Amendments

The 1971 amendment added "R. C. M. 1947" to the reference to section 66-1012.

66-1025. Qualifications for licensure—physician's certificates, reciprocity and endorsement. (1) Subject to the other provisions and conditions of this act, a physician's certificate, or a certificate by reciprocity or a certificate by endorsement shall be granted by the board to an applicant therefor only upon the basis of:

(a) and (b). * * * [Same as parent volume.]

(c) a valid, unsuspended and unrevoked license or certificate issued to the applicant on the basis of an examination, by a duly constituted examining board under the laws of any other state or any territory of the United States or of the District of Columbia or of any foreign country whose licensing standards at the time such license or certificate was issued were, in the considered judgment of the board, essentially equivalent to those of the state of Montana for the granting of a license to practice medicine, provided:

(i) that under the scope of such license or certificate that the applicant was authorized to practice medicine in such state, territory or country;

(ii) to (v). * * * [Same as parent volume.]

(vi) holders of the degree of doctor of osteopathy will be certified only on the basis of taking and passing the examination given by the board.

History: En. Sec. 16, Ch. 338, L. 1969;
amd. Sec. 4, Ch. 203, L. 1971.

Amendments

The 1971 amendment added subdivision (c) (vi) and made a minor change in phraseology.

66-1027. Qualifications for licensure—limitations. (1) No person shall be granted a physician's certificate to practice medicine in the state of Montana unless he:

(a) is a citizen of the United States;

(b) is of good moral character, as determined by the board;

(c) is a graduate of an approved medical school as defined in section 66-1028.

(d) has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is at least the equivalent of one (1) year internship as herein defined;

(e) has made a personal appearance before the board. The board may grant such license subject to terms of probation or other conditions or limitations set by the board of [or] may refuse to grant a license to any such person if he has committed any of the acts or offenses herein defined as unprofessional conduct, or is otherwise unqualified.

(2) No person shall be granted a temporary license to practice medicine in the state of Montana unless he:

(a) is a citizen of the United States, or has filed a properly executed declaration of intention to become a citizen of the United States;

(b) is of good moral character, as determined by the board;

(c) is a graduate of an approved medical school as defined in section 66-1028;

(d) has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is, at least, the equivalent of one (1) year internship as herein defined;

(e) has made a personal appearance before at least one (1) member of the board; and

(f) has been approved for temporary licensure by the executive secretary of the board; and

(g) a temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may grant such temporary license subject to terms of probation or other conditions or limitations set by the board or may refuse to grant a license to any such person if he has committed any of the acts or offenses herein defined as unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend such temporary license.

The board may, in any case of an applicant for a temporary certificate, require a written, oral or practical examination of said applicant.

History: En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971.

Amendments

The 1971 amendment deleted former subdivisions (1)(a) and (2)(a), each of which read "is at least twenty-one (21) years of age"; redesignated former sub-

divisions (b) through (f), inclusive, of subsection (1) as subdivisions (a) through (e), inclusive; redesignated former subdivisions (b) through (h), inclusive of subsection (2) as subdivisions (a) through (g), inclusive; and made minor changes in phraseology and style.

66-1028. Approved medical school. An approved medical school is a school which either (a) is accredited by the American Osteopathic Association, or (b) conforms to the minimum education standards as established by the Council on Medical Education of the American Medical Association or successors for medical schools or is equivalent in the sound discretion of the board of medical examiners of the state of Montana, it being provided that the board shall have the authority upon investigation of the educational standards and facilities thereof to approve any other medical school, including foreign medical schools.

History: En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971.

Amendments

The 1971 amendment inserted "either," clause (a) and the designation for clause (b).

66-1029. Approved internship. An approved internship is an internship training program of at least one (1) year in a hospital which is either (a) approved for intern training by the American Osteopathic Association, or (b) conforms to the minimum standards for intern training established by the Council on Medical Education of the American Medical Association or successors; provided, however, that the board shall have the authority, upon investigation, to approve any other internship.

History: En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971.

Amendments

The 1971 amendment inserted "which is

either" and clause (a); inserted the designation for clause (b); and made minor changes in phraseology.

66-1030. Approved residency. An approved residency is a residency training program in a hospital conforming to (a) the minimum standards for residency training established by the Council on Medical Education of the American Medical Association or successors or (b) approved for residency training by the American Osteopathic Association; provided, however, that the board shall have the authority upon investigation to approve any other residency. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

History. En. Sec. 21, Ch. 338, L. 1969;
amd. Sec. 7, Ch. 203, L. 1971.

Amendments

The 1971 amendment inserted the designation for clause (a); and inserted "or" and clause (b).

CHAPTER 12—NURSING—REGULATION OF PRACTICE

66-1223. Creation of the Montana state board of nursing, etc.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(18).

CHAPTER 13—OPTOMETRY—REGULATION

Section

66-1307. Renewal of registration—revocation—fees.

66-1318. Attendance at continuing educational programs prerequisite for license renewal—exemption.

66-1303. (3157) Examiners in optometry.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(19).

66-1307. (3161) Renewal of registration — revocation — fees. Every registered optometrist who desires to continue the practice of optometry in this state shall annually on or before the second day of July of each year pay to the secretary of said board a renewal fee not to exceed the sum of fifty dollars (\$50) in return for which a renewal of registration shall be issued. The board may present to registered optometrists at least one annual educational program. If any person shall fail or neglect to procure his annual renewal of registration, his certificate of registration shall be revoked by said board; provided, however, that no certificate of registration shall be revoked without ninety (90) days' notice having been given to the delinquent, who within such period shall have the right to the renewal of his certificate of registration on the payment of the renewal fee with a penalty of thirty-five dollars (\$35).

History: En. Ch. 138, L. 1907; Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R. C. M. 1921; amd. Sec. 4½, Ch. 171, L. 1925; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963; amd. Sec. 1, Ch. 75, L. 1971.

Amendments

The 1971 amendment increased the maximum renewal fee specified in the first sentence from \$20 to \$50, and increased the penalty specified at the end of the section from \$25 to \$35.

66-1318. Attendance at continuing educational programs prerequisite for license renewal—exemption. Beginning June 1, 1971 each Montana licensed optometrist in active practice in the state of Montana shall be required to attend not less than twelve (12) hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the Montana state board of examiners in optometry, as a prerequisite for his license renewal. A copy of this act shall be sent to each licensee by the board prior to the license renewal date each year. The board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reason.

History: En. 66-1318 by Sec. 1, Ch. 79, L. 1971. censed optometrist to attend continuing educational programs for not less than twelve (12) hours annually.

Title of Act

An act to require each Montana li-

CHAPTER 14—OSTEOPATHY—REGULATION OF PRACTICE

66-1401. (3125) Board of osteopathic examiners, etc.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(20).

CHAPTER 15—PHARMACY—REGULATION OF SALE OF
DRUGS AND MEDICINES

Section

- 66-1501. Sale of drugs, medicines, etc., unlawful except as provided herein.
- 66-1502. Terms defined as used in this act.
- 66-1504. Montana state board of pharmacy—powers of board.
- 66-1506. Examination of applicants for registration—fees—certificates.
- 66-1507. Annual renewal of registration fees.
- 66-1508. Store license—certified pharmacy license—suspension or revocation.
- 66-1509. Judicial review of acts of board.
- 66-1521. Attorney general to be attorney for state board of pharmacy—prosecutions
—secretary to assist in enforcement—duties of county attorneys.

66-1501. (3170) Sale of drugs, medicines, etc., unlawful except as provided herein. (a) It shall be unlawful for any person to compound, dispense, vend or sell at retail, drugs, medicines, chemicals or poisons in any place other than a pharmacy, except as hereinafter provided.

(b) It shall be unlawful for any proprietor, owner or manager of a pharmacy, or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern in the temporary absence of such pharmacist.

(c) It shall be unlawful for any person falsely to assume or pretend to the title of pharmacist or intern, unless such person has a license as such issued and in force pursuant to the terms of this act.

(d) It shall be unlawful for any person other than a licensed and registered pharmacist, or a licensed and registered intern to compound,

dispense, vend or sell at retail, drugs, medicines, chemicals or poisons, except as in this act provided.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" throughout the section and made a minor change in phraseology.

66-1502. (3170.1) Terms defined as used in this act. (a) and (b) * * *
[Same as parent volume.]

(c) The term "intern" shall mean a natural person licensed as such by the state board of pharmacy to prepare, compound, dispense and sell drugs, medicines, chemicals and poisons in a pharmacy having a pharmacist in charge.

(d) to (n) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in subsection (c).

66-1503. (3173) Montana state board of pharmacy, etc.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(21).

66-1504. (3174) Montana state board of pharmacy—Powers of board. (a) * * * [Same as parent volume.]

(b) Powers and duties of board of pharmacy. The Montana state board of pharmacy shall have power, and it shall be its duty:

(1) to (5) * * * [Same as parent volume.]

(6) To examine, license and register as pharmacists all applicants whom the board shall deem qualified as such as prescribed herein. To regulate the practice of interns in accordance with national standards. To license pharmacies and certain stores, and to issue certificates of "certified pharmacy" as in this act provided.

(7) To revoke temporarily or permanently, upon fair hearing, after reasonable notice of formal charges have been served, licenses issued by it to any pharmacist or intern whenever the holder of such license has obtained the same by false representations or fraud of any character or shall be an habitual drunkard or addicted to the use of narcotic drugs, or shall have been convicted of a felony, or shall have been convicted of violating the pharmacy law, or shall have been found guilty by the board of incompetency in the preparation of prescriptions, or guilty of gross immorality affecting the discharge of his duties as a pharmacist or assistant subject to the right of any person whose license may be revoked to review by the district court of the proper county on any question of law and fact.

(8) to (11) * * * [Same as parent volume.]

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R. C.

M. 1921; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971.

Amendments

The 1971 amendment inserted the second sentence of subdivision (b)(6); and

substituted "intern" for "assistant pharmacist" in subdivision (b)(7).

66-1506. (3176) Examination of applicants for registration—fees—certificates. (a) The board shall meet at least once a year to examine applicants for registration as pharmacists and interns and to transact its other business, giving reasonable notice of all examinations by mail, to all known applicants therefor. The secretary shall record the names of all persons examined by the board together with the grounds upon which the right of each to examination was claimed and also the names of all persons registered by examination or otherwise. The fee for any examination shall be twenty-five dollars (\$25) which fee may, in the discretion of the board, be returned to applicants not taking the examination.

(b) Upon again making payment of such fee any applicant who fails may be entitled to take the next succeeding examination free of charge.

(c) Fees for registration by reciprocity shall be fifty dollars (\$50).

Qualifications for examination. To be entitled to examination by the board as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, and shall be a graduate of the school of pharmacy of the state University of Montana or of a college or school of pharmacy recognized and approved by, or a member, of the American association of colleges of pharmacy, but such applicant shall not receive a registered pharmacist's license until he has complied with the internship requirements established by the state board of pharmacy. During this period, provided applicant has passed such examination, he shall be licensed as an intern only.

Reciprocity. The board may, in its discretion, grant registration without examination, to any pharmacist licensed by the board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state, provided the requirements for registration in such other state are, in the opinion of the board, equivalent to the requirements herein provided. Every person licensed and registered under this act shall receive from the state board of pharmacy an appropriate certificate attesting the fact as it may be which certificate shall be conspicuously displayed at all times in his place of business. If the holder be entitled to manage or conduct a pharmacy in the state for himself or another, the fact shall be set forth in the certificate.

Pharmacists or interns not required to be examined or to register anew under this act. Persons, who, at the time of the enactment of this law, hold certificates of registration as pharmacists, or interns, granted by the state board of pharmacy of this state, shall not be required to submit to examinations or to register anew under this law, but all such persons shall apply for and secure annual renewals of their present registration as provided in this act, and in all other respects be amenable to and governed by the provisions of this act and the rules and regulations of the board from time to time promulgated under this act.

History: En. Sec. 646, Pol. C. 1895; 7, Ch. 134, L. 1915; re-en. Sec. 3176, R. re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. C. M. 1921; amd. Sec. 6, Ch. 175, L. 1939;

amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 168 and once by Ch. 241. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 168, Laws of 1971, deleted "at least twenty-one (21) years of age" from the first sentence in the paragraph headed

"Qualifications for examination"; and made minor changes in phraseology and style.

Chapter 241, Laws of 1971, substituted "intern" for "assistant pharmacist" throughout the section; increased the examination fee from \$15 to \$25; inserted "registered pharmacist's" before "license" near the end of the first sentence of the paragraph headed "Qualifications for examination"; and substituted "complied with the internship requirements established by the state" for "at least one (1) year of practical experience in a pharmacy which has been approved by the" at the end of the first sentence of the paragraph headed "Qualifications for examination".

66-1507. (3177) Annual renewal of registration fees. Every person licensed and registered by the board shall annually pay to the board on or before the 30th day of June, a renewal of registration fee of fifteen dollars (\$15). Any default in the payment of a renewal fee for a period of thirty days after the date the same is due shall increase the renewal registration fee to the sum of thirty dollars (\$30). It shall be unlawful for any such person who refuses or fails to pay such renewal fee to practice pharmacy in this state. The practice of pharmacy in the state of Montana is declared a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest. Every certificate and renewal shall expire at the time prescribed, not later than one (1) year from its date. A default in a renewal fee may be reinstated within one (1) year of such default without examination upon payment of the arrears.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R. C. M. 1921; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971.

Amendments

The 1971 amendment, inserted "on or before the 30th day of June" in the first sentence; increased the renewal fee from \$5 to \$15; inserted the second sentence; and added the last sentence.

66-1508. Store license—certified pharmacy license—suspension or revocation. (a). * * * [Same as parent volume.]

(b) The state board of pharmacy shall require and provide for the annual registration and licensing of every pharmacy now or hereafter doing business within this state within the meaning of the act. Upon presentation of evidence satisfactory to the board and upon application upon such form as the board may prescribe and upon the payment of an annual fee of twenty dollars (\$20), the board shall license any pharmacy as a "CERTIFIED PHARMACY," provided, however, that such license shall be granted only to such pharmacies as are operated by registered pharmacists or registered interns qualified as herein prescribed. Such license must be exposed in a conspicuous place in the pharmacy for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct such pharmacy, to use the word pharmacy to identify his business or to use the word pharmacy

in any advertising unless such license has been duly issued and is in full force and effect.

(e) The board may suspend, revoke or refuse to renew any store or pharmacy license obtained by false representation, or fraud of any character, or when the pharmacy for which the license shall have been issued is kept open for the transaction of business without a pharmacist in charge thereof, or when the person to whom the license shall have been granted has been convicted for violation of any of the provisions of the act or for a felony, or convicted for any violation of the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 United States Statutes at Large, 1040 through 1059; Title 21, United States Code, sections 301-392 as from time to time revised, amended, and supplemented), or, if a natural person, whose pharmacist or intern license has been revoked, or when the store or pharmacy is conducted in violation of the provisions of this act. Before any license can be revoked the holder thereof shall be entitled to a hearing by the board after reasonable notice, and judicial review of the action of the board.

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in subsections (b) and (c); and made a minor change in style.

66-1509. Judicial review of acts of board. (a) Review by the district court of any order revoking either permanently or temporarily a license of any pharmacist or intern, or any store or pharmacy, or any order, decision or finding of the board shall be made by petition in writing filed with the clerk of the district court of the county wherein the pharmacist or intern, store or pharmacy, or other affected person or business was operating at the time of the revocation of any such license, or at the time of such order, decision or finding. The petition shall concisely state the facts and order complained against.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 175, L. 1939; amd. Sec. 7, Ch. 241, L. 1971.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in two instances in subsection (a).

66-1521. (3202.10) Attorney general to be attorney for state board of pharmacy—prosecutions—secretary to assist in enforcement—duties of county attorneys. The attorney general of the state of Montana shall be the attorney for the Montana state board of pharmacy but said board may in its discretion employ other counsel. The secretary of the Montana state board of pharmacy shall, under such rules and regulations as the board may prescribe, assist the board and the attorney general or other counsel in the administration and enforcement of this act. It shall be the duty of the county attorney of any county wherein any offense hereunder is committed to prosecute the offender. The board, its secretary or the county attorney is authorized to examine the books of any manufacturer, druggist, storekeeper, wholesale dealer, pharmacist, intern or pharmacy

within the state for the purpose of acquiring information to aid in prosecutions hereunder.

History: En. Sec. 4, Ch. 104, L. 1931;
amd. Sec. 10, Ch. 175, L. 1939; amd. Sec.
8, Ch. 241, L. 1971.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in the last sentence.

CHAPTER 18—PUBLIC ACCOUNTANTS—REGULATION

Section

66-1819. Certificates of certified public accountants.
66-1820. Registration of public accountants.

66-1813. State board of public accountancy—membership.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(2).

66-1819. Certificates of certified public accountants. A certificate shall be issued by the board to any person:

(a) Who is (1) a citizen of the United States or who has duly declared his intention of becoming a citizen, (2) is a resident of this state or has a place of business herein or, as an employee, is regularly employed herein, and (3) is of good moral character;

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 118, L. 1969;
amd. Sec. 5, Ch. 168, L. 1971.

division (a) a clause (3) reading "has attained the age of twenty-one (21) years" and redesignated former clause (a) (4) as (a)(3).

Amendments

The 1971 amendment deleted from sub-

66-1820. Registration of public accountants. Registration as a public accountant shall be available to any person:

(a) Who is (1) a citizen of the United States or who has duly declared his intention of becoming a citizen, (2) is a resident of this state or has a place of business herein or, as an employee, is regularly employed herein; and (3) is of good moral character;

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 8, Ch. 118, L. 1969;
amd. Sec. 6, Ch. 168, L. 1971.

division (a) a clause (3) reading "has attained the age of twenty-one (21) years" and redesignated former clause (a)(4) as (a)(3).

Amendments

The 1971 amendment deleted from sub-

CHAPTER 19—REAL ESTATE LICENSE ACT

Section

66-1929. Licenses—applicants for licenses.

66-1927. Real estate commission, etc.

Cross-References

Commission renamed and continued in

department of professional and occupational licensing, sec. 82A-1602(23).

66-1929. Licenses—applicants for licenses. (a). * * * [Same as parent volume.]

(b) Each applicant for a broker's license shall be a citizen of the United States; shall be at least eighteen (18) years of age; shall have graduated from an accredited high school or shall have completed an equivalent education as determined by the commission; shall have been actively engaged as a licensed real estate salesman for a period of two (2) years or shall have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during such two (2) year period as determined by the commission, except that if the commission shall find that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the commission may waive this experience requirement; and must file an application for license with the commission. The commission shall require such information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency.

(c) Each applicant for a salesman's license shall be at least eighteen (18) years of age; shall have received credit for completion of two (2) years of full curriculum study at an accredited high school or shall have completed an equivalent education as determined by the commission; and must file an application for license with the commission. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The commission shall issue to each licensed broker and to each licensed salesman a license and a pocket card in such form and size as the commission shall prescribe.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in each of subsections (b) and (c) from 21 to 18 years.

CHAPTER 21—TITLE ABSTRACTERS—REGULATION

66-2102. (4139.2) Abstracters board of examiners.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(1).

CHAPTER 22—VETERINARY MEDICINE—REGULATION OF PRACTICE

Section

66-2204. Applications for license to practice—examinations—fees.

66-2201. (3217) Appointment of state board, etc.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(24).

66-2204. (3220) Applications for license to practice—examinations—fees. Any citizen of the United States desiring to begin the practice of

veterinary medicine or veterinary surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to said board of examiners for license so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of said applicant shall be submitted to said board for inspection and verification, and such photostatic copy shall be and remain the property of the board. Every person applying to said board for license to practice shall pay to the board the fee of twenty-five dollars (\$25), which fee shall in no case be refunded. Said board shall by means of examination, either oral or written or practical, or such combination of oral or written or practical as the board may determine, ascertain the professional qualifications for license of all applicants under this act, except that investigation under reciprocity arrangements may replace examination for licensees from other states as provided by section 66-2208, and the board shall issue such license to all who are found upon such examination or investigation to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination or investigation to be competent.

Such examination shall be held in January and June of each year at a time and place or places specified by said board. Such examination shall cover theory and practice, materia medica and therapeutics, livestock sanitation, surgery, and communicable diseases and such other subjects chosen by the board as are ordinarily included in the curriculum of a legal chartered school of veterinary medicine recognized and approved by the American veterinary medical association.

Said board shall consecutively number all applications received and note upon each the disposition made of it and preserve same for reference, and shall number consecutively all licenses issued; provided, that veterinarians who are at the time of the passage and approval of this act licensed and registered to practice veterinary medicine in the state of Montana, shall be entitled to a license without such examination.

All applicants must achieve a grade of seventy per cent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at any subsequent examination, shall pay another application fee in the amount of twenty-five dollars (\$25), and shall take another complete examination in all subjects.

An applicant for examination hereunder may in the discretion of the board be given a temporary permit to practice veterinary medicine prior to taking the examination, provided such applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act; such temporary permit shall be valid only until the date of the next succeeding examination, and no longer, and under no circumstances shall the board issue a second temporary permit to the

same person. A temporary permit shall not be issued to a person who has failed an examination given by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R. C. M. 1921; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971.

Amendments

The 1971 amendment deleted "who is over the age of twenty-one (21) years" following "citizen of the United States" at the beginning of the section; and made minor changes in style.

CHAPTER 23—ENGINEERS AND LAND SURVEYORS

Section

66-2326. Definitions.

66-2337. Application for registration—fees.

66-2344. Registration of persons registered by other states or authorities.

66-2326. Definitions. The term "engineer" as used in this act shall mean a professional engineer as hereinafter defined.

The term "professional engineer" within the meaning and intent of this act shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as hereinafter defined, as attested by his legal registration as a professional engineer.

The term "engineer-in-training" as used in this act shall mean a candidate for registration as a professional engineer who is a graduate in an engineering curriculum of four years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development or its successor as an agency evaluating professional engineering curricula, or equivalent curricula as approved by the board, or who has had four years or more of experience in engineering work of a character satisfactory to the board; and who, in addition, has successfully passed the examination in the fundamental engineering subjects as provided in section 66-2338, and who shall have received from the board, as hereinafter defined, a certificate stating that he has successfully passed this portion of the professional examinations.

The term "practice of engineering" within the meaning and intent of this act shall mean any professional service or creative work requiring engineering education, training, and experience and the application of such special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, engineering planning service performed in connection with city, county, regional and state planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, and including such architectural work as is incidental to the practice of engineering.

The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment, or communication lines or signal circuits, or electric power lines or pipelines.

The term "land surveyor" as used in this act shall mean a person who engages in the practice of land surveying as hereinafter defined.

The practice of land surveying within the meaning and intent of this act includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the plotting of lands and subdivisions thereof.

The term "board" as used in this act shall mean the state board of registration for professional engineers and land surveyors provided for by this act.

History: En. Sec. 3, Ch. 150, L. 1957; amd. Sec. 1, Ch. 282, L. 1969; amd. Sec. 1, Ch. 364, L. 1971.

ing planning service performed in connection with city, county, regional and state planning" in the paragraph defining practice of engineering.

Amendments

The 1971 amendment inserted "engineer-

66-2327. Board—members—term.

Cross-References

Board renamed and continued in depart-

ment of professional and occupational licensing, sec. 82A-1602(11).

66-2337. Application for registration—fees. Applications for registration shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

The registration fee for professional engineers shall be thirty-five dollars (\$35), twenty dollars (\$20) of which shall accompany application, the remaining fifteen dollars (\$15) to be paid upon issuance of certificate. When a certificate of qualification issued by the national bureau of engineering registration is accepted as evidence of qualification, the total fee for registration as professional engineer shall be twenty dollars (\$20).

The fee for engineer-in-training shall be twenty dollars (\$20), which shall accompany the application and shall include the cost of examination and issuance of certificate. When certification as an engineer-in-training by another state, or any territory or possession of the United States or any county [country], is accepted as evidence of qualification, the fee for engineer-in-training in Montana shall be five dollars (\$5). When registration as a professional engineer is completed by an engineer-in-training, an additional fee of fifteen dollars (\$15) shall be paid before issuance of certificate as a professional engineer.

The registration fee for land surveyors shall be thirty-five dollars (\$35), which shall accompany the application. The fee for registration as both a professional engineer and land surveyor shall be fifty dollars (\$50), thirty-five dollars (\$35) of which shall accompany the application, the remaining fifteen dollars (\$15) to be paid upon issuance of certificate.

Should the board deny the issuance of a certificate of registration to any applicant the initial fee deposited shall be retained as an application fee.

History: En. Sec. 14, Ch. 150, L. 1957; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971.

Compiler's Notes

The compiler has inserted the bracketed

word "country" in the second sentence of the third paragraph.

Amendments

The 1971 amendment increased all the fees prescribed by this section.

66-2344. Registration of persons registered by other states or authorities. The board may, upon application therefor, and the payment of a fee of twenty dollars (\$20), issue a certificate of registration as a professional engineer to any person who holds a certificate of qualification or registration issued to him by proper authority of the national bureau of engineering registration, or of any state or territory or possession of the United States, or of any country, provided that the applicant's qualifications meet the requirements of this act and the rules established by the board.

History: En. Sec. 21, Ch. 150, L. 1957; amd. Sec. 8, Ch. 282, L. 1969; amd. Sec. 3, Ch. 364, L. 1971.

Amendments

The 1971 amendment increased the registration fee from \$10 to \$20.

Repealing Clause

Section 4 of Ch. 364, Laws 1971 repealed all acts and parts of acts in conflict therewith.

CHAPTER 24—PLUMBERS

66-2403. Board of plumbing examiners, etc.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(22).

Representative of board of health replaced on board, sec. 82A-1606(2).

CHAPTER 25—PHYSICAL THERAPISTS PRACTICE ACT

Section

66-2502. Qualifications of applicants for license.

66-2502. Qualifications of applicants for license. To be eligible for a license from the board as a physical therapist an applicant must:

- (1) Be of good moral character;
- (2) Have been graduated from a school of physical therapy approved by the council of medical education and hospitals of the American Medical Association;
- (3) Either (a) pass to the satisfaction of the board an examination conducted by it to determine his fitness for practice as a physical therapist; or, (b) be entitled to a license without examination as provided by section 66-2505 or 66-2506.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971.

Amendments

The 1971 amendment deleted a former

subdivision (1) reading "Be at least twenty-one years old"; and redesignated former subdivisions (2) to (4), inclusive, as subdivisions (1) to (3), inclusive.

CHAPTER 26—WATER WELL CONTRACTOR'S LICENSE ACT

66-2604. Water well contractor's examining board, etc.**Cross-References**

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(26).

State engineer and director of environmental sanitation replaced on board, sec. 82A-1606(4).

CHAPTER 27—MORTICIANS AND FUNERAL DIRECTORS

Section

66-2708. Embalming and mortuary science—qualifications for mortician's license.

66-2702. State board of morticians—appointment and term of office.**Cross-References**

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(16).

ment of professional and occupational licensing, sec. 82A-1602(16).

66-2708. Embalming and mortuary science—qualifications for mortician's license. The practice of embalming or mortuary science is prohibited by anyone who does not hold a mortician's license issued by the board. To qualify for a mortician's license a person must

(1) Be of good moral character.

(2) Have graduated from an accredited college of mortuary science, and have satisfactorily completed two (2) academic years at an accredited college or university. This subsection shall not apply to a person who is enrolled in an accredited college of mortuary science on the effective date of this act.

(3) Pass an examination prescribed by the board.

(4) Serve a one (1) year internship under the supervision of a mortician in a licensed mortuary in Montana.

History: En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971.

subdivision (1) reading "Be at least twenty-one (21) years of age"; and redesignated former subdivisions (2) to (5), inclusive, as subdivisions (1) to (4), inclusive.

Amendments

The 1971 amendment deleted a former

CHAPTER 28—ELECTRICAL SAFETY LAW

66-2802. Purpose.**Cross-References**

Board functions transferred to department of law enforcement and public safety, sec. 82A-1203(1).

ment of law enforcement and public safety, sec. 82A-1203(1).

66-2804. State electrical board.**Cross-References**

Board renamed and continued in department of law enforcement and public safety, sec. 82A-1602(10).

ment of professional and occupational licensing, sec. 82A-1602(10).

66-2806. Electrician must have license.**Cross-References**

Board functions transferred to department of law enforcement and public safety, sec. 82A-1203(1).

ment of law enforcement and public safety, sec. 82A-1203(1).

CHAPTER 29—MASSEURS—REGULATION AND LICENSING

66-2903. State board of massage examiners, etc.

Cross-References : Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(14).

CHAPTER 30—HEARING AID DISPENSERS

66-3002. Board of hearing aid dispensers created.

Cross-References	
Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(12).	

CHAPTER 31—NURSING HOMES AND ADMINISTRATORS

Section
66-3103. Qualifications for licensure.

66-3102. Composition of board.

Cross-References	Executive officer of department of health
Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(17).	and administrator of department of public welfare replaced on board, sec. 82A-1606(1).

66-3103. Qualifications for licensure. The board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators. No license shall be issued to a person as a nursing home administrator unless:

(a) He is of good character and of sound physical and mental health;
and

(b) and (c). * * * [Same as parent volume.]

Provided, however, that persons meeting the standards of good character and sound physical and mental health who have been approved by the board as an "administrator" and are serving in such capacity on the effective date of this act, and who have served in this capacity continuously for at least one (1) year immediately preceding, may be granted a license as a "nursing home administrator" by waiver. All other persons applying for a license after the effective date of this act must meet the conditions and requirements as may be prescribed by the board. A waiver may be granted for a period of two (2) years after the effective date of this act, or until June 30, 1972, whichever is earlier, to allow an individual to meet the requirements as determined by this board. The minimum standards for qualification established by said board shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act, as amended, 1967 (P.L. 90-248).

History: En. Sec. 3, Ch. 363, L. 1969;
amd. Sec. 10, Ch. 168, L. 1971.

Amendments

The 1971 amendment deleted "at least twenty-one (21) years of age" from subdivision (a).

CHAPTER 32—PSYCHOLOGISTS—LICENSING AND REGULATION

Section

- 66-3201. Legislative finding and purpose.
- 66-3202. Definitions.
- 66-3203. License required to practice psychology—exempt activities.
- 66-3204. Creation of board of examiners.
- 66-3205. Duties of board.
- 66-3206. Examinations and issuance of license—expiration and renewal—publication of list of psychologists.
- 66-3207. Additional powers and duties of board.
- 66-3208. Qualifications and requirements for licensure—reciprocity.
- 66-3209. Grounds for refusal or revocation of license.
- 66-3210. Notice and hearing required on refusal or revocation of license—procedure for judicial relief.
- 66-3211. Fees.
- 66-3212. Confidential relationship between psychologist and client.
- 66-3213. Penalties for violation of act.
- 66-3214. Injunction of unlawful practice—restrictions on scope of practice.

66-3201. Legislative finding and purpose. The legislative assembly finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

History: En. Sec. 1, Ch. 73, L. 1971.

Title of Act

An act providing for the licensing and regulation of persons in Montana repre-

senting themselves as psychologists, and creating a state board of psychologist examiners, prescribing its powers and duties, and providing penalties for violations.

66-3202. Definitions. As used in this act:

(1) "Accredited college or university" means any college or university accredited by the regional accrediting association for institutions of higher learning, such as the Northwest Association of Secondary and Higher Schools.

(2) "Board" means the state board of psychologist examiners.

(3) A person represents himself to be a "psychologist" when he holds himself out to the public by any title or description of services incorporating the words psychologist, psychological, psychologic, or psychology and offers to render or renders such psychological services defined in subsection (4) of this section to individuals, groups, corporations, or the public for compensation or fee.

(4) "Practice of psychology" shall mean the application of principles, methods and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, motions, and interpersonal relationship; the methods and procedures of interviewing, counseling and behavior modification including psychotherapeutic techniques and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions and motivation.

History: En. Sec. 2, Ch. 73, L. 1971.

66-3203. License required to practice psychology—exempt activities.

(1) After January 1, 1972, no person may represent himself to be a

psychologist or engage in the practice of psychology unless he is licensed under this act.

(2) Nothing in this act shall be construed to prevent:

(a) Qualified members of other professions such as, but not limited to, physicians, social workers, lawyers, pastoral counselors or educators, from doing work of a psychological nature consistent with their training and the codes of ethics of their respective professions if they do not hold themselves out to the public by any title or description incorporating the words "psychology" or "psychologist."

(b) The activities, services, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency, or of other political subdivisions, or a duly charged educational or charitable institution in so far as such activities and services are a part of the duties of his office, or position with such agency or institution.

(c) The activities and services of a student, intern, or resident in psychology, pursuing a course of study at an accredited university or college, or working in a generally recognized training center, if these activities and services constitute a part of his supervised course of study.

(d) The activities and services of a person who is not a resident of this state, in rendering consulting psychological services in Montana when these services are rendered for a period which does not exceed in the aggregate more than sixty (60) days during any calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; provided that such persons shall report to the board the nature and extent of such services in this state if they exceed ten (10) days within any calendar year.

(e) A person authorized by the laws of the state or country of his former residence to perform such activities and services, who has recently become a resident of this state, and who has applied for licensure in Montana, pending disposition of his application.

(f) The use of the term "social psychologist" by any person who:

(i) Has been graduated with a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by a recognized educational institution and, who

(ii) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology and, who

(iii) has filed with the board a statement of facts demonstrating his compliance with this subdivision.

(g) The offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment.

(h) Activities of a psychological nature on the part of persons who are salaried employees of accredited academic institutions, governmental agencies, research laboratories, and business corporations, provided such employees are performing those duties for which they are employed by such organizations, and within the confines of such organization.

History: En. Sec. 3, Ch. 73, L. 1971.

66-3204. Creation of board of examiners. The state board of psychologist examiners is established to administer this act.

(1) The board shall consist of three psychologists who shall be appointed by the governor within ninety (90) days after this act takes effect. The governor shall select his appointees for this first board from a list submitted to him by the Montana Psychological Association, consisting of the names of all members of the Montana Psychological Association who are currently certified by its board of examiners and who are also members of the American Psychological Association and who hold the Ph.D. degree.

(2) The members of the first board shall serve the following terms: one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years. Thereafter, at the expiration of the term of each member, the governor shall appoint his successor for a term of three (3) years from the list of licensed psychologists.

(3) Before entering upon the duties of his office, each member of the board shall take the constitutional oath of office and file it with the secretary of state. Each member of the board first appointed under this act shall be issued a license upon payment of the appropriate fee.

(4) No member of the board may be appointed to succeed himself, but any member may be reappointed after a period of three (3) years following the termination of a previous appointment.

(5) Each member of the board shall be a citizen of the United States and a resident of Montana.

(6) Any vacancy in the membership of the board occurring other than by expiration of term, shall be filled by appointment by the governor for the unexpired term, from a current list similar to the one submitted to him under subsection (2) hereof.

History: En. Sec. 4, Ch. 73, L. 1971.

Cross-References

Bonds of state officers and employees,
sec. 6-105 et seq.

66-3205. Duties of board. (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. The secretary of the board shall keep a record of its proceedings. Other regular meetings shall be held at such times as the rules of the board may provide. Special meetings may be held at such times as may be deemed necessary or advisable by the chairman and the majority of its members, or upon the request of the governor. Reasonable notice of all meetings shall be given in the manner prescribed by the board. The quorum of the board shall consist of the majority of its members.

(2) The board may employ such other persons as it deems necessary or desirable to carry out the provisions of this act, all of whom shall receive such compensation as may be fixed in the budget from time to time.

(3) Each board member shall receive actual necessary traveling and subsistence expenses incidental to board meetings as provided for in the statutes.

(4) The board may make all rules which are reasonable and necessary

for the proper performance of its duties and for the regulation of proceedings before it, and which are not inconsistent with the constitution or the laws of this state.

(5) The board shall prepare a report to the governor as required by law.

(6) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(7) The board shall adopt an official seal.

History: En. Sec. 5, Ch. 73, L. 1971.

66-3206. Examinations and issuance of license—expiration and renewal—publication of list of psychologists. (1) The board shall administer examinations to qualified applicants for licensing at least once a year. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.

(2) An applicant who fails his first examination may be re-examined at subsequent examination upon the payment of another examination fee. An applicant who fails two (2) successive examinations may apply for re-examination after two (2) years of additional professional experience or training.

(3) The board shall issue a license to each person who meets the requirements for licensure as prescribed in this act. The license shall include the dates of issuance and expiration and shall bear a serial number. It shall be signed by the secretary of the board under the seal of the board.

(4) The license shall expire on January 1 following the date of its issuance or renewal and is invalid thereafter. The board shall notify each person licensed under this act relative to the date of the expiration of his license and the amount of his renewal fee. This notice shall be mailed to each licensed psychologist at his listed address at least one (1) month before the expiration of the license.

(5) Renewal may be made at any time during the sixty (60) days prior to the expiration date by application therefor. Failure on the part of any person licensed to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased ten per cent (10%) for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal shall not exceed twice the normal renewal fee. Application for renewal following a lapse of one (1) year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) The board shall publish yearly a list of all psychologists licensed under this act. This list shall contain names and addresses and such other information as the board deems advisable. The board shall mail a copy of this list to each person licensed under this act, place a copy on

file in the secretary of state's office, and furnish copies to the public, upon request.

History: En. Sec. 6, Ch. 73, L. 1971.

66-3207. Additional powers and duties of board. (1) In addition to the other powers and duties set forth, the board may:

(a) Revoke and suspend licenses.

(b) Conduct hearings upon complaints concerning persons licensed under this act.

(c) Cause the prosecution and enjoinder of all persons violating this act, by the complaint of its secretary signed with the county attorney, in the county where the violation took place, and incur necessary expenses therefor.

(d) Study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana.

History: En. Sec. 7, Ch. 73, L. 1971.

66-3208. Qualifications and requirements for licensure—reciprocity.

(1) Application for examination for licensing a psychologist shall be made upon forms prescribed by the board.

(2) Prior to January 1, 1973, the board shall license as a psychologist any person who pays the prescribed fee, and who submits evidence by oath that he:

(a) Is a resident of or shows satisfactory evidence of intent to become a resident of Montana at the time he is licensed.

(b) Is at least twenty-one (21) years of age.

(c) Is of good moral character.

(d) Has received a doctoral degree based on a program of studies, primarily psychological in content, from an accredited college or university having an appropriate graduate program.

(e) Shall have completed at the time of application a minimum of two (2) years of experience in the practice, research or teaching of psychology. One (1) year of such experience shall be post-doctoral.

(3) After January 1, 1973, all applicants must meet the requirements set forth in subsection (2) of this section and shall pass an examination administered by the board.

(4) Prior to January 1, 1973, a license may be issued to an individual who has been a resident of the state for at least one (1) year and who holds a master's degree from an accredited college or university based on a program which is primarily psychological, and in addition has had five (5) years of professional experience satisfactory to the board, provided he has met the requirements of paragraphs (a), (b) and (c) of subsection (2) of this section.

(5) A license without examination may be issued by the board to any psychologist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the require-

ments of this act, or to any psychologist who is a diplomate in good standing of the American Board of Professional Psychology.

History: En. Sec. 8, Ch. 73, L. 1971.

66-3209. Grounds for refusal or revocation of license. (1) A license applied for, or issued under this act, may be refused or revoked by the board upon proof that the person to whom the license was issued:

(a) Has been convicted of a felony;

(b) Has been guilty of fraud or deceit in securing the license or any renewal thereof; or

(c) Is using any narcotic or any alcoholic beverage to an extent that such use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(d) Has been guilty of unprofessional conduct as defined by the code of ethics published by the American Psychological Association.

History: En. Sec. 9, Ch. 73, L. 1971.

66-3210. Notice and hearing required on refusal or revocation of license—procedure for judicial relief. (1) The board may not refuse to issue or renew or revoke the license of any person for any cause other than failure to pay fees unless the person has been given at least thirty (30) days' notice in writing by certified mail of the charges against him and a hearing by the board. The written notice shall be mailed to the person's last known address. Upon such hearing, the board may administer oaths and procure by subpoena the attendance of witnesses and the production of relevant books and papers.

(a) Any action of, or ruling or order made or entered by the board declining to issue a certificate to, or declining to recommend licensure of any person shall be subject to judicial review in the manner hereinafter provided. The review shall be in the district court in and for the county in which the board's action was taken.

(b) A person seeking judicial review shall, within thirty (30) days after the board's action, serve upon the secretary of the board a written notice of appeal for review stating the grounds of appeal. At the same time, such persons shall file in the office of the secretary of the board an appeal bond in an amount not to exceed three hundred dollars (\$300), with good and sufficient surety to be approved by the secretary. The bond shall run to the state of Montana for the benefit of the board, conditioned for the speedy prosecution of the appeal and the payment of such costs on appeal as may be charged against the party appealing.

(c) The secretary of the board, within ten (10) days after receipt of notice of appeal and the filing and approval of the appeal bond, shall transmit to the clerk of the district court to which the appeal is taken, a copy certified under the seal of the board all of the files of the board concerning the proceedings before the board together with the appeal bond. The district court may award costs to the prevailing party on appeal.

(d) The clerk of such court shall thereupon docket such appeal and it shall be tried de novo as any other action.

(e) Either party may appeal from the judgment of the district court to the supreme court in the same manner as civil actions may be appealed.

(f) In cases of revocation or suspension, the action of the board shall be stayed from the date of approval of the appeal bond until final determination of the appeal.

History: En. Sec. 10, Ch. 73, L. 1971.

66-3211. Fees. (1) The board shall collect the following fees none of which is refundable:

(a) Application fee	\$25.00
(b) Examination fee	\$15.00
(c) Certificate fee	\$10.00
(d) Renewal fee	\$20.00 to \$50.00

The board is hereby empowered to set the annual renewal fee annually within the above limits.

(2) The initial certificate fee shall be prorated as follows:

If the certificate is issued between January 2 and March 31\$10.00

If the certificate is issued between April 1 and June 30\$ 7.50

If the certificate is issued between July 1 and September 30\$ 5.00

If the certificate is issued between October 1 and January 1\$ 2.50

(3) Renewal certificates shall be secured annually and dated January 2.

(4) All moneys received by the board shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the board.

History: En. Sec. 11, Ch. 73, L. 1971.

66-3212. Confidential relationship between psychologist and client.

(1) The confidential relations and communications between a psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and his client. Nothing in this act or any other shall be construed to require such privileged communications to be disclosed.

History: En. Sec. 12, Ch. 73, L. 1971.

Compiler's Notes

This section as enacted contained no subsection (2).

66-3213. Penalties for violation of act. (1) Any person who violates any of the provisions of this act shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or by both.

History: En. Sec. 13, Ch. 73, L. 1971.

Compiler's Notes

This section as enacted contained no subsection (2).

66-3214. Injunction of unlawful practice—restrictions on scope of practice. (1) The practice of psychology in any way other than as defined in this act may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such

cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

(2) Nothing in this act shall be construed as permitting psychologists to prescribe drugs, perform surgery or administer electro-convulsive therapy.

History: En. Sec. 14, Ch. 73, L. 1971.

Separability Clause

Section 15 of Ch. 73, Laws 1971 read:
“(1) If any provision of this act, or the application thereof to any person or circumstances is held to be invalid, such in-

validity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.”

TITLE 67—PROPERTY

Chapter

- 16. Transfer of real property—method and effect, 67-1602.1.
- 18. Uniform gifts to minors act, 67-1801, 67-1804, 67-1807.
- 22. Disposition of unclaimed property, 67-2211 to 67-2226.

CHAPTER 8—OBLIGATIONS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY—MONUMENTS AND FENCES

67-808. Restriction on liability to gratuitous licensee for recreation.

Government Licensee

Notwithstanding that the agreement between power company and United States government used word "licensee," power company qualified as "landowner or tenant," as used in this section, since legal effect of instrument was to create lease; therefore, power company could properly use this section as an affirmative defense in personal injury action. State ex rel. Tucker v. District Court of Thirteenth Judicial District in and for Stillwater County, — M —, 468 P 2d 773.

Property

In action for personal injuries resulting from fall from private train being operated on defendant's property, trial court properly overruled plaintiff's motion to strike affirmative defense based on this section on ground that this section applies only to injuries caused by real estate, since, under section 19-103, "property," as used in this section, includes both real and personal property. State ex rel. Tucker v. District Court of Thirteenth Judicial District in and for Stillwater County, — M —, 468 P 2d 773.

CHAPTER 15—ACQUISITION OF PROPERTY BY TRANSFER— GRANTS AND THEIR INTERPRETATION

67-1511. (6845) Delivery to grantee is necessarily absolute.

Unconditional Delivery and Acceptance

Informal written instrument, indicating that donor wished to pay money on demand but that it could be collected against his estate if not demanded or paid sooner, was unconditionally delivered and ac-

cepted when accepted by donee, even though no demand for payment was made during donor's lifetime. Faith Lutheran Retirement Home v. Veis, — M —, 473 P 2d 503.

CHAPTER 16—TRANSFER OF REAL PROPERTY—METHOD AND EFFECT

Section

67-1602.1. Joint tenancy created by direct conveyance.

67-1602.1. Joint tenancy created by direct conveyance. A joint tenancy as to any interest in real property may be established by the owner thereof, by designating in the instrument of conveyance or transfer, the names of such joint tenants including his own, without the necessity of any transfer or conveyance to or through a third person.

All joint tenancies created in this manner prior to July 1, 1963, are sufficient in law to create a joint tenancy.

History: En. Sec. 1, Ch. 208, L. 1963; amd. Sec. 1, Ch. 9, L. 1971.

paragraph, validating all joint tenancies created by direct conveyance prior to July 1, 1963.

Amendments

The 1971 amendment added the second

CHAPTER 18—UNIFORM GIFTS TO MINORS ACT

Section

67-1801. Definitions.

67-1804. Duties and powers of custodian.

67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian.

67-1801. Definitions. In this act, unless the context otherwise requires:

(a) An “adult” is a person who has attained the age of eighteen (18) years.

(b) to (e). * * * [Same as parent volume.]

(f) A “custodian” is a person so designated in a manner prescribed in this act; the term includes a successor custodian.

(g) A “financial institution” is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal laws or the laws of a state or a federal credit union or a credit union chartered and supervised under the laws of a state; a “domestic financial institution” is one chartered and supervised under the laws of this state or chartered and supervised under federal law and having its principal office in this state: an “insured financial institution” is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, by the federal savings and loan insurance corporation, or by a deposit insurance fund approved by this state.

(h) to (l). * * * [Same as parent volume.]

(m) A “minor” is a person who has not attained the age of eighteen (18) years.

(n) to (p). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 245, L. 1957;
amd. Sec. 1, Ch. 234, L. 1967; amd. Sec.
11, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subdivisions (a) and (m) from 21 to 18 years, and made minor changes in punctuation.

67-1804. Duties and powers of custodian. (a) to (e). * * * [Same as parent volume.]

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of eighteen (18) years, or if the minor dies before attaining the age of eighteen (18) years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) to (j). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 245, L. 1957;
amd. Sec. 4, Ch. 234, L. 1967; amd. Sec.
12, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subsection (d) from 21 to 18 years.

67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian. (a). * * * [Same as parent volume.]

(b) The designation of a successor custodian as provided in subsection

(a) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(1) causes the item if it is a security which is custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "as custodial [custodian] for _____ (name of minor) under the Montana Uniform Gifts to Minors Act"; and

(2). * * * [Same as parent volume.]

(c). * * * [Same as parent volume.]

(d) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (a) is not eligible, dies or becomes legally incapacitated before the minor attains the age of eighteen (18) years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (a), a donor, his legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(e) and (f). * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 245, L. 1957;
amd. Sec. 6, Ch. 234, L. 1967; amd. Sec.
13, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subsection (d) from 21 to 18 years.

Compiler's Notes

The compiler has inserted the bracketed word in subdivision (b)(1).

CHAPTER 22—DISPOSITION OF UNCLAIMED PROPERTY

Section

- 67-2211. Report of abandoned property.
- 67-2212. Notice and publication of lists of abandoned property.
- 67-2213. Payment or delivery of abandoned property.
- 67-2214. Relief from liability by payment or delivery.
- 67-2215. Income accruing after payment or delivery.
- 67-2216. Periods of limitation not a bar.
- 67-2217. Sale of abandoned property.
- 67-2218. Deposit of moneys.
- 67-2219. Claim for abandoned property paid or delivered.
- 67-2220. Determination of claims.
- 67-2221. Judicial action upon determinations.
- 67-2222. Election to take payment or delivery.
- 67-2223. Examination of records.
- 67-2224. Proceeding to compel delivery of abandoned property.
- 67-2225. Penalties.
- 67-2226. Rules and regulations.

67-2206. Property of business associations, etc.

Shares and Dividends

Where corporation was voluntarily dissolved, unclaimed shares and their pro rata share of unpaid dividends would become abandoned property and subject to

escheat to state two years after final distribution of assets. *Barnes-King Development Co. v. Corette*, — M —, 478 P 2d 868.

67-2211. Report of abandoned property. (a) Every person holding moneys or other property, tangible or intangible, presumed abandoned under this act shall report to the state board of equalization with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1). * * * [Same as parent volume.]

(2) In case of unclaimed moneys of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) and (4). * * * [Same as parent volume.]

(5) Other information which the state board of equalization prescribes by rule as necessary for the administration of this act.

(c). * * * [Same as parent volume.]

(d) The report shall be filed before November 1 every three (3) years as of June 30 next preceding, but the reports of life insurance corporations, banking and financial organizations and co-operatives, shall be filed before May 1 of each year as of December 31 next preceding. The state board of equalization may request that any other reports be filed each year. The state board of equalization may postpone the reporting date upon written request by any person required to file a report. The state board of equalization shall furnish forms for this report.

(e) to (g). * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 244, L. 1963; amd. Sec. 1, Ch. 21, L. 1967; amd. Sec. 2, Ch. 226, L. 1967; amd. Sec. 1, Ch. 216, L. 1971.

"moneys" for "funds" in subsection (a) and in subdivision (b)(2); and substituted "state board of equalization" for "state treasurer" in subsection (a), in subdivision (b)(5), and in three places in subsection (d).

Amendments

The 1971 amendment substituted

67-2212. Notice and publication of lists of abandoned property. (a) Within one hundred twenty (120) days from the filing of the report required by section 67-2211, the state board of equalization shall cause notice to be published at least once each week for two (2) successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain:

(1). * * * [Same as parent volume.]

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state board of equalization.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five (65) days from the date of the second published notice, the abandoned property will be placed not later than eighty-five (85) days after such publication date in the custody

of the state board of equalization to whom all further claims must thereafter be directed.

(c) The state board of equalization is not required to publish in such notice any item of less than twenty-five dollars (\$25) unless the board deems such publication to be in the public interest.

(d) Within one hundred twenty (120) days from the receipt of the report required by section 67-2211, the state board of equalization shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars (\$25) or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the state board of equalization, property is being held to which the addressee appears entitled.

(2). * * * [Same as parent volume.]

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the state board of equalization to whom all further claims must be directed.

(f). * * * [Same as parent volume.]

History: En. Sec. 12, Ch. 244, L. 1963; amd. Sec. 3, Ch. 226, L. 1967; amd. Sec. 2, Ch. 216, L. 1971.

Amendments

The 1971 amendment substituted references to the state board of equalization for

references to the state treasurer in the first sentence of subsection (a), at the end of subdivision (b)(2), near the end of subdivision (b)(3), in two places in subsection (c), in subsection (d), and in subdivisions (e)(1) and (e)(3).

67-2213. Payment or delivery of abandoned property. Every person who has filed a report as provided by section 67-2211 shall within twenty (20) days after the time specified in section 67-2212 for claiming the property from the holder, or in the case of sums payable on travelers' checks or money orders presumed abandoned under section 67-2202 within twenty (20) days after the filing of the report, pay or deliver to the state board of equalization all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 67-2212, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state board of equalization, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History: En. Sec. 13, Ch. 244, L. 1963; amd. Sec. 4, Ch. 226, L. 1967; amd. Sec. 3, Ch. 216, L. 1971.

Amendments

The 1971 amendment substituted "state board of equalization" for "state treasurer" in two places.

67-2214. Relief from liability by payment or delivery. Upon the payment or delivery of abandoned property to the state board of equalization, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the

state board of equalization under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the state board of equalization pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the state board of equalization shall forthwith reimburse the holder for the payment. Any holder who has paid moneys to the state board of equalization pursuant to this act, and after exhausting his legal remedies, is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof thereof and upon proof that the state board of equalization was notified in writing of the claim of such other state within thirty (30) days after such claim has been asserted, the state board of equalization shall refund to such holder the amount of such second payment not in excess of the amount paid to the state board of equalization under this act.

History: En. Sec. 14, Ch. 244, L. 1963;
amd. Sec. 4, Ch. 216, L. 1971.

Amendments

The 1971 amendment substituted "state board of equalization" for "state treasurer" in eight places.

67-2215. Income accruing after payment or delivery. When property is paid or delivered to the state board of equalization under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History: En. Sec. 15, Ch. 244, L. 1963;
amd. Sec. 5, Ch. 216, L. 1971.

Amendments

The 1971 amendment substituted "state board of equalization" for "state treasurer."

67-2216. Periods of limitation not a bar. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the state board of equalization.

History: En. Sec. 16, Ch. 244, L. 1963;
amd. Sec. 6, Ch. 216, L. 1971.

board of equalization" for "state treasurer" at the end of the section.

Amendments

The 1971 amendment substituted "state

67-2217. Sale of abandoned property. (a) All abandoned property other than money delivered to the state board of equalization under this act shall within one (1) year after the delivery be sold by the board to the highest bidder at public sale in whatever city in the state affords in the board's judgment the most favorable market for the property involved. The state board of equalization may decline highest bid and reoffer the property for sale if the board considers the price bid insufficient.

The board need not offer any property for sale if, in the board's opinion, the probable cost of sale exceeds the value of the property.

(b). * * * [Same as parent volume.]

(c) The purchaser at any sale conducted by the state board of equalization pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state board of equalization shall execute all documents necessary to complete the transfer of title.

History: En. Sec. 17, Ch. 244, L. 1963; amd. Sec. 7, Ch. 216, L. 1971.

Amendments

The 1971 amendment substituted refer-

ences to the state board of equalization for references to the state treasurer in seven places in subsection (a) and in two places in subsection (c).

67-2218. Deposit of moneys. (a) All moneys received under this act, including the proceeds from the sale of abandoned property under section 67-2217, shall forthwith be deposited by the state board of equalization with the state treasurer for credit to the trust and legacy fund, public school account of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding twenty-five thousand dollars (\$25,000) from which he shall make prompt payment of claims allowed by the board as hereinafter provided. Before making the deposit the state board of equalization shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the public school account, the state board of equalization may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.

History: En. Sec. 18, Ch. 244, L. 1963; amd. Sec. 8, Ch. 216, L. 1971.

Amendments

The 1971 amendment substituted "All moneys" for "All funds" at the beginning of subsection (a); substituted references to the state board of equalization for references to the state treasurer in three

places in subsection (a) and in one place in subsection (b); substituted "with the state treasurer for credit to the trust and legacy fund, public school account" in the first sentence of subsection (a) for "in the public school fund"; and substituted "public school account" for "public school fund" in subsection (b).

67-2219. Claim for abandoned property paid or delivered. Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state board of equalization.

History: En. Sec. 19, Ch. 244, L. 1963; amd. Sec. 9, Ch. 216, L. 1971.

Amendments

The 1971 amendment substituted "state board of equalization" for "state treasurer" at the end of the section.

67-2220. Determination of claims. (a) The state board of equalization shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held the board shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by the board and the reasons for the board's decision. The decision shall be a public record.

(b) If the claim is allowed, the state board of equalization shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History: En. Sec. 20, Ch. 244, L. 1963;
amd. Sec. 10, Ch. 216, L. 1971.

Amendments

The 1971 amendment substituted refer-

ences to the state board of equalization for references to the state treasurer in four places in subsection (a) and in one place in subsection (b).

67-2221. Judicial action upon determinations. Any person aggrieved by a decision of the state board of equalization or as to whose claim the board has failed to act within ninety (90) days after the filing of the claim, may commence an action in the district court of Lewis and Clark county to establish his claim. The proceeding shall be brought within ninety (90) days after the decision of the state board of equalization or within one hundred eighty (180) days from the filing of the claim if the board fails to act. The action shall be tried de novo without a jury.

History: En. Sec. 21, Ch. 244, L. 1963;
amd. Sec. 11, Ch. 216, L. 1971.

Amendments

The 1971 amendment substituted refer-

ences to the state board of equalization for references to the state treasurer in four places.

67-2222. Election to take payment or delivery. The state board of equalization, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which the board deems to have a value less than the cost of giving notice and holding sale, or the board may, if the board deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History: En. Sec. 22, Ch. 244, L. 1963;
amd. Sec. 12, Ch. 216, L. 1971.

Amendments

The 1971 amendment substituted refer-

ences to the state board of equalization for references to the state treasurer in four places.

67-2223. Examination of records. The state board of equalization, or their designated agent, may at reasonable times and upon reasonable notice examine the records of any person if the board has reason to believe that such person has failed to report property that should have been reported pursuant to this act.

History: En. Sec. 23, Ch. 244, L. 1963;
amd. Sec. 13, Ch. 216, L. 1971.

Amendments

The 1971 amendment substituted "The

state board of equalization, or their designated agent" for "The state treasurer" at the beginning of the section; and substituted "the board" for "he" before "has reason to believe."

67-2224. Proceeding to compel delivery of abandoned property. If any person refuses to deliver property to the state board of equalization as required under this act, the board shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History: En. Sec. 24, Ch. 244, L. 1963; amd. Sec. 14, Ch. 216, L. 1971.

ences to the state board of equalization for references to the state treasurer in two places.

Amendments

The 1971 amendment substituted refer-

67-2225. Penalties. (a). * * * [Same as parent volume.]

(b) Any person who willfully refuses to pay or deliver abandoned property to the state board of equalization as required under this act shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisonment for not more than six (6) months, or both, in the discretion of the court.

History: En. Sec. 25, Ch. 244, L. 1963; amd. Sec. 15, Ch. 216, L. 1971.

board of equalization" for "state treasurer" in subsection (b).

Amendments

The 1971 amendment substituted "state

67-2226. Rules and regulations. The state board of equalization is hereby authorized to make necessary rules and regulations to carry out the provisions of this act and shall be represented in the enforcement of the provisions of this act by the special assistant attorney general in charge of escheated estates.

History: En. Sec. 26, Ch. 244, L. 1963; amd. Sec. 16, Ch. 216, L. 1971.

state board of equalization" for "The state treasurer" at the beginning of the section.

Amendments

The 1971 amendment substituted "The

TITLE 68—PUBLIC EMPLOYEES' RETIREMENT ACT

Chapter

- 8. Retirement—compulsory—voluntary, 68-801.
- 9. Service and disability retirement allowances, 68-901, 68-902.
- 13. Miscellaneous provisions, 68-1307.

CHAPTER 5—BOARD OF ADMINISTRATION—POWERS AND DUTIES

68-501. Board of administration.

Cross-References

Board of administration continued, sec. 82A-210.

Investment functions of board transferred, sec. 82A-205(4).

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

CHAPTER 7—MANAGEMENT OF RETIREMENT FUND

68-701. Management of retirement fund.

Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(e).

Investment functions of board transferred, sec. 82A-205(4).

CHAPTER 8—RETIREMENT—COMPULSORY—VOLUNTARY

Section

68-801. Voluntary service retirement.

68-801. Voluntary service retirement. (a) and (b). * * * [Same as parent volume.]

(c) Any person so employed shall be considered as reinstated from retirement and his retirement allowance shall be canceled forthwith. Upon subsequent retirement he shall be entitled to receive a benefit, as provided in section 68-901, which shall be based upon his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his re-employment. Unless otherwise expressly provided he shall not receive retirement benefits enacted subsequent to the date he initially retires unless he shall have accrued at least two (2) years of creditable service subsequent to his reinstatement from retirement.

History: En. Sec. 19, Ch. 212, L. 1945; amd. Sec. 7, Ch. 297, L. 1947; amd. Sec. 5, Ch. 186, L. 1951; amd. Sec. 1, Ch. 35, L. 1955; amd. Sec. 4, Ch. 246, L. 1959; amd. Sec. 2, Ch. 227, L. 1967; amd. Sec. 3, Ch. 271, L. 1969; amd. Sec. 1, Ch. 116, L. 1971.

Amendments

The 1971 amendment added the third sentence to subsection (c).

CHAPTER 9—SERVICE AND DISABILITY RETIREMENT ALLOWANCES

Section

68-901. Service retirement allowance.

68-902. Adjusted retirement allowance.

68-901. Service retirement allowance. A member who has reached his sixtieth birthday upon retirement from service is entitled to receive a service retirement allowance which shall consist of either an allowance as provided in subsections (a) through (f) of this section, or an allowance as provided in subsection (g) of this section at the option of the member:

(a). * * * [Same as parent volume.]

(b) A pension, purchased by the contributions of the state, or the contracting city, equal to one (1) that portion of the annuity purchased by the accumulated normal contributions of the member, or (2) one quarter ($\frac{1}{4}$) of his average final compensation provided his total state service is at least thirty-two and one-half ($32\frac{1}{2}$) years, otherwise, a pension which shall be one one-hundred thirtieth ($\frac{1}{130}$) of his average final compensation multiplied by the number of years of state service; whichever is greater.

(c) An additional pension, purchased by the contributions of the state, for members other than persons who are employees of the university at the time of becoming members, and members employed by a contracting city. Such additional pension shall be equal to one sixty-fifth ($\frac{1}{65}$) of the member's final compensation, multiplied by the number of years of prior service except that if a member retires before attaining the age of sixty (60) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty (60) will purchase at the actual age of retirement.

(d). * * * [Same as parent volume.]

(e) An additional pension, purchased by contributions of the state, for members who are also employees of the university at the time of becoming members, said additional pension to accrue from the date of retirement under the system regardless of whether said retirement was prior to the effective date hereof. Such additional pension shall be equal to one sixty-fifth ($\frac{1}{65}$) of the average annual compensation earnable by him during the three (3) years preceding retirement, multiplied by the number of years of prior service credited to him, except that if a member retires before attaining the age of sixty (60) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty (60), will purchase at the actual age of retirement. If, however, a member who is employed by the university at the time of becoming a member, shall not have rendered state service before January 1, 1946, his additional pension shall be based upon one sixty-fifth ($\frac{1}{65}$) of the average annual compensation earnable by him during the first year of the state service, or such portion thereof as he may have served before January 1, 1946, multiplied by the number of years of prior service credited to him.

(f). * * * [Same as parent volume.]

(g) A member who reaches his sixtieth birthday upon retirement from service is entitled to receive a service retirement allowance which shall con-

sist of a retirement allowance which shall be equal, at age sixty (60) to one sixty-fifth (1/65) of his final compensation, multiplied by the number of years of service. A member retiring prior to the age of sixty (60) shall be entitled to a retirement allowance which shall be the actuarial equivalent of that portion of his retirement allowance based on his credited service prior to the date of actual retirement and which would have been payable to him at age sixty (60).

MINIMUM GUARANTEE

(h). * * * [Same as parent volume.]

DISABILITY RETIREMENT

(i) and (j). * * * [Same as parent volume.]

DISABILITY RETIREMENT ALLOWANCE

(k). * * * [Same as parent volume.]

(l) Every other member retired for disability shall receive a retirement allowance which shall consist of:

(i) An annuity which shall be equal to one one-hundred thirtieth (1/130) of his final compensation multiplied by the number of years of state service; and

(ii) If, in the opinion of the board of administration, such disability is not due to intemperance, willful misconduct or violation of law on the part of the member, a pension paid from the contributions of the state, or of the contracting city which, together with his annuity provided by his accumulated normal contributions, shall make the retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal to ninety per cent (90%) of one sixty-fifth (1/65) of his final compensation multiplied by the number of years of service credited to him. In no event, however, shall this pension exceed twenty-five per cent (25%) of his final compensation.

(iii). * * * [Same as parent volume.]

(m). * * * [Same as parent volume.]

History: En. Sec. 20, Ch. 212, L. 1945; amd. Sec. 6, Ch. 186, L. 1951; amd. Sec. 5, Ch. 246, L. 1959; amd. Sec. 1, Ch. 207, L. 1963; amd. Sec. 3, Ch. 227, L. 1967; amd. Sec. 4, Ch. 271, L. 1969; amd. Sec. 2, Ch. 116, L. 1971.

Amendments

The 1971 amendment reduced the total service required to qualify for maximum pension under subsection (b) from 35 to 32½ years; increased the basis for other pensions under subsection (b) from 1/140th to 1/130th of average compensation; increased from 1/70th to 1/65th of compensation the basis for pensions payable under the second sentence of subsection (c), under the second and third sentences of subsection (e), and under the first sentence of subsection (g); increased the basis for the annuity payable

under subdivision (l)(i) from 1/140th to 1/130th of final compensation; and increased the basis for the pension payable under subdivision (l)(ii) from 1/70th to 1/65th of final compensation.

Incapacity Not Result of Employment

District court improperly reversed decision of board which refused relator's claim for an occupational disability retirement allowance based upon job-related disability caused by adverse working conditions and granted relator ordinary disability retirement allowance since district court substituted its judgment for that of board and since "disease," as used in this section, does not mean "personality disorders, anxiety reactions, or difficulties in getting along with one's superiors or fellow workers." State ex rel. Bailey v. Grande, 154 M 437, 465 P 2d 334.

68-902. Adjusted retirement allowance. (1) "Index" for purposes of this section shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959-100) compiled by the Bureau of Labor Statistics, United States Department of Labor, or successor agency.

(2) Effective July 1, 1971, every service or disability retirement allowance then payable to a retired member pursuant to the provisions of section 68-901, R.C.M. 1947, or to his beneficiary pursuant to the provisions of section 68-1005, R.C.M. 1947, shall be increased by a percentage equal to one-half of the percentage increase in the index for 1970 from the index for the calendar year preceding the effective date of retirement of the member.

(3) Effective July 1, 1971, every survivorship annuity then payable to a member's beneficiary pursuant to the provisions of section 68-1101 (e), R.C.M. 1947, shall be increased by a percentage equal to one-half of the percentage increase in the index for 1970 from the index for the calendar year preceding the date of death of the deceased member.

History: En. Sec. 68-902 by Sec. 3, Ch. 116, L. 1971.

Title of Act

An act relating to the public employees' retirement system changing the formula for calculating retirement benefits; increasing the employer contribution to the

retirement fund; increasing retirement allowances to members of the system retired prior to July 1, 1971; requiring a minimum of two (2) years of creditable service after reinstatement from retirement to be eligible for newly enacted retirement benefits; amending sections 68-801, 68-901, 68-1307, R. C. M. 1947, and adding new section 68-902, R. C. M. 1947.

CHAPTER 13—MISCELLANEOUS PROVISIONS

Section

68-1307. Allocation of money to public employees' retirement fund—disbursement procedure—contributions under this section, how applied.

68-1307. Allocation of money to public employees' retirement fund—disbursement procedure—contributions under this section, how applied.

(a) During the biennium for which appropriations of money are made by this legislative assembly, there shall be paid monthly by each department, board, commission, bureau, or other agency of the state into the public employees' retirement fund out of moneys appropriated from the state general fund, a sum equal to four and three-tenths per cent (4.3%) of the total compensation paid members of the retirement system from July 1, 1971 through June 30, 1973; four and six-tenths per cent (4.6%) from July 1, 1973 through June 30, 1975; and, four and nine-tenths per cent (4.9%) of total compensation thereafter. In computing the amount of compensation upon which these percentages shall be reckoned, there shall be included a sum equal to the amount of compensation which would have been paid to members of the system who elect to continue and do continue their contributions to the system and who are absent with the armed forces of the United States, so long as such absence shall be continued.

(b) Each department, board, commission, bureau or other agency of the state shall certify to the state auditor at the end of each month

the total amount of compensation paid members of the retirement system, including that which would have been paid to members who are absent in the armed forces of the United States. The state auditor shall thereupon draw a warrant upon the state treasurer for the contribution due from the state. Said warrants shall be drawn on funds appropriated to each department, board, commission, bureau of other agency of the state to the credit of the public employees' retirement fund and the state treasurer shall deposit the amount thereof in said retirement fund.

(c). * * * [Same as parent volume.]

(d) Each department, board, commission, bureau or other agency of the state under whose supervision there are state employees who are paid either fully or in part from federal funds, but who are not subject to the federal retirement system, shall certify to the state auditor at the end of each month the total amount of compensation paid such employees who are members of the retirement system; and the state auditor shall thereupon draw a warrant upon the state treasurer for the amount of contribution due from the state with respect to the compensation of such employees, regardless of whether such compensation is partly or entirely derived from federal funds. Such warrant shall be drawn on funds appropriated to such department, board, commission, bureau or other agency of the state to the credit of the public employees' retirement fund and the treasurer shall deposit the amount thereof in said retirement fund.

History: En. Sec. 35, Ch. 212, L. 1945; amd. Sec. 8, Ch. 297, L. 1947; amd. Sec. 1, Ch. 214, L. 1967; amd. Sec. 5, Ch. 271, L. 1969; amd. Sec. 4, Ch. 116, L. 1971.

contributions from four per cent to the percentages specified at the end of the first sentence of subsection (a); and made the necessary changes in phraseology elsewhere in the section.

Amendments

The 1971 amendment increased the state

CHAPTER 14—GAME WARDENS' RETIREMENT SYSTEM

68-1405. Payments into the Montana game wardens' retirement system.

Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(e).

Investment functions of board transferred, sec. 82A-205(4).

TITLE 69—PUBLIC HEALTH AND SAFETY

Chapter

15. Boiler inspection—engineers license, 69-1501 to 69-1505, 69-1507 to 69-1517.
16. Hoisting engines—license of operators, 69-1601 to 69-1604, 69-1607.
17. Traction engines—capacity—inspection, 69-1701, 69-1702.
19. Explosives—regulation of manufacture, storage, sale and possession, 69-1931, 69-1932.
21. Building and mobile home construction standards, 69-2121 to 69-2124.
22. Blood and blood products, 69-2203 to 69-2205.
27. Fireworks regulation, 69-2701.
34. Sanitarians, 69-3401 to 69-3405, 69-3407 to 69-3409.
36. Ambulance service, 69-3604 to 69-3613.
41. State board of health, 69-4118.
42. Occupational health, 69-4206 to 69-4221.
45. Local boards of health, 69-4509, 69-4510.
46. Venereal disease, 69-4610.
48. Water pollution, 69-4801, 69-4802, 69-4804 to 69-4806, 69-4807.1, 69-4808.2, 69-4809.1 to 69-4814, 69-4820 to 69-4827.
52. Hospitals, hospital related facilities, and long-term care facilities, 69-5201.
54. Cesspools, septic tanks, and privies, 69-5401 to 69-5405, 69-5407, 69-5408.
59. Water treatment plants and distribution systems, 69-5903, 69-5908, 69-5910.
60. Refuse disposal districts, 69-6002, 69-6007, 69-6010, 69-6012, 69-6013.
61. Consent by minors to medical care and psychiatric counseling, 69-6106, 69-6107.
64. Voluntary sterilization—state board of eugenics, 69-6402.
65. Montana Environmental Policy Act, 69-6501 to 69-6517.
66. Passenger tramways, 69-6601 to 69-6617.

CHAPTER 15—BOILER INSPECTION—ENGINEERS LICENSE

Section

- 69-1501. Advisory committee—functions—appointment and terms of members—traveling expenses—rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors.
- 69-1502. Qualifications of boiler inspectors.
- 69-1503. Inspection of boilers—boiler installations.
- 69-1504. Inspection of boilers—further requirements in making inspection.
- 69-1505. Inspection of boilers—material to be used.
- 69-1507. Duty of owner to permit inspection—board action—costs and expenses.
- 65-1508. Licenses required—penalty for operating without license.
- 69-1509. Classification and licensing of engineers.
- 69-1510. Complaints and revocation of license.
- 69-1511. Certificate of inspection—penalty for wrongfully issuing certificate of inspection or licenses.
- 69-1512. Fees for inspection or examination.
- 69-1513. Review of license rejection.
- 69-1514. Board decision.
- 69-1515. Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler.
- 69-1516. Certificates must be renewed yearly—failure to renew.
- 69-1517. Operation of boiler or steam engine without license.

69-1501. (2712) Advisory committee—functions—appointment and terms of members—traveling expenses—rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors. (1) There is hereby created to advise the industrial accident board an advisory committee which shall hereafter be referred to as the

committee, consisting of three (3) members who shall be appointed by the governor, one for two (2) years, one for three (3) years and one for four (4) years. At the expiration of their respective terms or when vacancies occur they or their successors identified with the same interest respectively shall be appointed by the governor for terms of four (4) years each. Of these appointed members one (1) shall be a Montana first class steam licensed operating engineer of boilers employed in that capacity at the time of his appointment, one (1) shall be commissioned by the national board of boilers and pressure vessels inspectors and shall represent the boiler insurance companies licensed to do business in the state, and one (1) shall be a Montana registered professional mechanical engineer. The committee shall elect one (1) of its members as chairman and shall meet whenever required.

The members of the committee shall serve without salary but shall receive actual travel expenses in the same manner as other state officers.

The committee shall act in a technical advisory capacity to the industrial accident board and shall formulate definitions, rules and regulations for the safe construction, installation, operation, inspection and repair of equipment covered by this act. The definitions, rules and regulations so formulated shall follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

(2) Appointment, term and compensation of boiler inspectors. The industrial accident board shall appoint state inspectors of boilers and shall prescribe their duties, term of office and fix their compensation.

In addition to the state boiler inspectors the industrial accident board shall issue to the inspectors of boiler insurance companies authorized to do business in the state, commissions, certificates or other recognition as special boiler inspectors and shall accept the inspection reports of such special inspectors as equivalent to those of the state inspectors, provided that each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors. Such special inspectors shall receive no salary or expenses from the state nor shall the state collect inspection fees for inspections made by such special inspectors.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "a Montana first class steam licensed operating engineer of boilers employed in that capacity at the time of his appointment" for "a practical steam operating engineer of boilers" in the third sentence of the first paragraph of subsection (1); inserted "shall be commissioned by the national board of boilers and pressure vessels inspectors and" in the third sentence of the first paragraph of subsection (1);

substituted "a Montana registered professional mechanical engineer" for "a graduate mechanical engineer" at the end of the third section of the first paragraph of subsection (1); substituted "whenever required" for "twice each year" at the end of the first paragraph of subsection (1); inserted "operation" in the first sentence of the third paragraph of subsection (1); deleted "not to exceed four (4)" before "state inspectors" in the first paragraph of subsection (2); inserted "duties" in the first paragraph of subsection (2); and made minor changes in phraseology.

Cross-References

Committee abolished and functions transferred, sec. 82A-1005(2).

69-1502. (2713) Qualifications of boiler inspectors. No person is eligible to hold the office of inspector of boilers and steam engines who has not had at least ten years of actual experience in the operation of steam engines, steam boilers, and steam machinery, and who has not held for at least three (3) years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana, or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery, or any patented article required to be sold relating thereto.

History: En. Sec. 2, p. 102, L. 1889; amd. Sec. 551, Pol. C. 1895; re-en. Sec. 1640, Rev. C. 1907; amd. Sec. 2, Ch. 30, L. 1913; re-en. Sec. 2713, R. C. M. 1921; amd. Sec. 2, Ch. 225, L. 1971.

Amendments

The 1971 amendment reduced the stationary engineer's license requirement from five years to three years.

69-1503. (2714) Inspection of boilers—boiler installations. (1) The inspector of boilers must inspect all boilers and steam generators before the same are used, and all persons who bring into this state, for operation in this state, any boiler or boilers must notify the board stating the number and kind of boilers, and where they are to be located and operated in this state, and must secure from the board a certificate of inspection before said boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety (90) days after they are put in use, and all boilers must be inspected at least once in every year, except boilers exempt under provisions of section 69-1515. Upon written application, longer inspection intervals may be authorized by the board. Any owner, operator or user who opens a boiler or boilers between inspections for repair or other reasons must notify the board of such action and such boiler or boilers shall at the discretion of the board be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation. Any person failing to give notice to the board as herein provided, or who operates such boilers without a certificate from the board, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense, or by imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days, or by both such fine and imprisonment.

(2) When necessary, the boiler inspector shall subject boilers, except those exempted by 69-1515, to hydrostatic pressure, which hydrostatic pressure shall not exceed one hundred fifty per cent (150%) of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure. And the inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least two (2) inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be

injured thereby, and that such boilers and the steam connections may be safely employed without danger to life.

(3). * * * [Same as parent volume.]

History: Ap. p. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "all boilers" for "all steam boilers" near the beginning of subsection (1); inserted "for operation in this state" in the first sentence of subsection (1); substituted

"board" for "boiler inspector" in four places in subsection (1); deleted "where they had heretofore been located" following "number and kind of boilers" in the first sentence of subsection (1); inserted new second and third sentences in subsection (1); inserted "When necessary" at the beginning of subsection (2); increased the hydrostatic pressure testing requirement specified in the first sentence of subsection (2) from 133⅓% to 150%; and made minor changes in phraseology.

69-1504. (2715) Inspection of boilers—further requirements in making inspection. (1) The inspector must also satisfy himself that the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged, and that the safety-valves are properly adjusted so as to allow no greater pressure in the boilers than the amount prescribed by the inspection certificate; that there are a sufficient number of gauge cocks properly inserted to indicate the amount of water, and suitable gauges that will correctly record the pressure of steam; and adequate and certain provisions for an ample supply of water to feed the boilers at all times, and that suitable means for blowing out are provided, so as to thoroughly remove mud and sediment from all parts of the boilers when they are under pressure of steam, and any renter, user, or owner of a boiler, or any person or persons who tamper with the safety valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate, shall be deemed guilty of a misdemeanor.

(2) Where a boiler is constructed with lap horizontal seams on boiler, dome, or drum, a factor of four and one-half shall be used in determining the safe working pressure allowed on such boiler. But where the boilers are constructed with butt-strap horizontal seams, a factor of four may be used in determining such safe working pressure. If boiler rests on side wall on lugs, or is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used to determine the safe working pressure allowed on boiler. Where the horizontal lap seams of boiler are exposed to the fire, a factor of five must be used to determine the safe working pressure to be allowed on such boiler. On stay bolts, if new, seven thousand five hundred pounds pressure per square inch shall be allowed. If such stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on same. On braces made of solid material, eight thousand pounds pressure per square inch shall be allowed. On welded braces or braces with only one crow-foot, six thousand pounds pressure per square inch shall be allowed. No cast iron shall be used in the construction or reinforcements of any boiler where the pressure allowed on said boiler is more than one hundred pounds per square inch.

History: Ap. p. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R. C. M. 1921; amd. Sec. 4, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "suitable relieving capacity ratings" for "suitable dimension" near the beginning of subsection (1); substituted "safety valves

are properly adjusted" for "safety-valve weights are properly adjusted" in subsection (1); deleted a second paragraph of subsection (1), for text of which see parent volume; and deleted from subsection (2) a third sentence reading "But in any case the inspector may use a higher factor if the conditions are such as to warrant it."

69-1505. (2716) Inspection of boilers—material to be used. No boiler or steam pipe, nor any of the connections thereto, shall be approved which is made in whole or in part of bad material, or is unsafe from any cause. Nothing herein shall be construed to prevent the use of any boiler or steam generator which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates.

History: En. Sec. 556, Pol. C. 1895; re-en. Sec. 1645, Rev. C. 1907; re-en. Sec. 2716, R. C. M. 1921; amd. Sec. 5, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "shall be approved" for "must be approved" in the first sentence.

69-1507. (2718) Duty of owner to permit inspection—board action—costs and expenses. It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same. In case the owner, operators, or manager of any boiler is notified by the inspector to have said boiler ready for inspection on a certain day, and fails to have such boiler ready for inspection at such time, the inspector shall notify the board to gain access to said boiler. Any person failing to immediately comply with board directed access to said boiler shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than two months nor more than six months, or by both such fine and imprisonment. The owner, engineer or manager of any boiler who has refused access resulting in a board order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order, in addition to the inspection fee provided by law. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same, and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R. C. M. 1921; amd. Sec. 6, Ch. 225, L. 1971.

Amendments

The 1971 amendment inserted "engineers" and the reference to water boilers in the first sentence; inserted "operators" in the second sentence; substituted "shall

notify the board to gain access to said boiler" at the end of the second sentence for "shall at once seal up the firebox in such boiler, and such seal must not be removed from the firedoor without a written order from the inspector"; substituted "failing to immediately comply with board directed access to said boiler" in the third sentence for "tampering with or removing said seal"; substituted "The owner, engi-

neer or manager of any boiler who has refused access resulting in a board order must pay" at the beginning of the fourth sentence for "If the owner or manager of any boiler that has been so sealed desires to have the same inspected before the next

regular visit of the inspector to the district where said boiler is situated, he must pay"; inserted "directed by such order" near the end of the fourth sentence; and made minor changes in phraseology.

69-1508. (2719) Licenses required—penalty for operating without license. No person shall be granted a license to operate steam or water boilers and steam machinery under the provisions of this article, who has not met the qualifications for licensing and found to be competent by examination to perform the duties of an engineer, and received a license so to act. Any person who operates any boiler or steam engine without first obtaining a license is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

History: En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R. C. M. 1921; amd. Sec. 7, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "steam or water boilers and steam machinery" for "steam boilers or steam machinery" near the beginning of the first sentence; sub-

stituted "met the qualifications for licensing and found to be competent by examination" for "been examined by the inspector and found competent" in the first sentence; deleted "written or printed" before "license" near the end of the first sentence; deleted "steam" before "boiler" near the beginning of the second sentence; and made minor changes in phraseology.

69-1509. (2720) Classification and licensing of engineers. (1) Engineers entrusted with the operation, care and management of steam or water boilers and steam machinery as specified in the preceding section must be divided into four classes, namely, first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery shall be divided into four classifications in accordance with the following:

(a) First-class engineers shall be licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers shall be licensed to operate steam boilers operating not in excess of two hundred fifty (250) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of three hundred seventy-five (375) pounds per square inch gauge pressure and four hundred fifty degrees Fahrenheit (450°F) temperature, and steam driven machinery not to exceed one hundred (100) horsepower per unit with the exception of traction and hoisting engines.

(c) Third-class engineers shall be licensed to operate steam boilers operating not in excess of one hundred (100) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of one hundred sixty (160) pounds per square inch gauge pressure and three hundred fifty degrees Fahrenheit (350°F) temperature.

(d) Low-pressure engineers shall be licensed to operate steam boilers

operating not in excess of fifteen (15) pounds per square inch gauge pressure or water boilers operating not in excess of fifty (50) pounds per square inch gauge pressure and two hundred fifty degrees Fahrenheit (250°F) temperature.

(3) Each applicant for an engineer's license shall meet the following minimum requirements for the class of engineer's license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of engineer's license for which application is being made.

(a) Applicants for low-pressure engineer's license shall have no less than three (3) months' full-time experience in the actual operation of a boiler in this classification and successfully pass a written examination prescribed by the board and has passed his eighteenth birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a low-pressure engineer's license.

(b) Applicants for third-class engineer's license shall have no less than six (6) months' full-time experience in the actual operation of a boiler in this classification, under an engineer holding a valid third-class or higher license, and successfully pass a written examination prescribed by the board and has passed his eighteenth birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a third-class engineer's license.

(c) Applicants for second-class engineer's license shall have:

(1) No less than two (2) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the board and has passed his twentieth birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license; or

(2) Hold a valid third-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the board and has passed his twentieth birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license.

(d) Applicants for first-class engineer's license shall have:

(1) No less than three (3) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his twenty-first birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification, shall be granted a first-class engineer's license; or

(2) Hold a valid second-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engi-

neer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his twenty-first birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license; or,

(3) Hold a valid third-class engineer's license and have no less than two (2) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his twenty-first birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license.

(e) Allowable exceptions or variances to the foregoing minimum requirements are as follows:

(1) Applicants for engineer's license in any classification holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the board and is found to be competent to operate a boiler or boilers and steam driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification satisfactory to the board, accumulated in United States military services or the merchant marine service may be accepted in lieu of the operating experience required for licensing of engineers in each of the foregoing classifications.

(3) Applicants with training in the actual operation of steam or water boilers and steam machinery who have been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other board approved institution or training program in the classification for which he is applying may at the discretion of the board be credited with a maximum of six (6) months' experience toward first, second, or third-class engineer's license.

(4) None of the licenses in this section above named shall entitle the holder thereof to operate a traction engine, but all persons who are entrusted with the care and management of traction engines, or boilers on wheels, are required to pass an examination as to their competency to operate such class of machinery and to procure a license to be known as a traction license. Such traction license shall not entitle the holder thereof to operate any other class of steam machinery specified in the preceding section. Applicants for a traction engineer's license shall have no less than six (6) months' full-time experience in the operation of steam traction engines and successfully pass a written examination prescribed by the board and has passed his eighteenth birthday and is found to be competent to operate a traction engine shall be granted a traction engineer's license. The board at its discretion may waive the experience requirement for operators of traction engines which are maintained and

operated as a hobby for the restoration and show purposes of antique equipment.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R. C. M. 1921; amd. Sec. 8, Ch. 225, L. 1971.

Amendments

The 1971 amendment inserted "operation" near the beginning of subsection

(1); substituted "steam or water boilers and steam machinery" for "steam machinery" in the first sentence of subsection (1); completely rewrote subsections (2) and (3), including therein the former second sentence of subsection (1); and completely rewrote the third and fourth sentences of subsection (4). For prior text, see parent volume.

69-1510. (2721) Complaints and revocation of license. Whenever complaint is made against an engineer holding a license that he through negligence, want of skill, or inattention to duty, permitted his boiler(s) to burn or otherwise become in bad condition, or that he has been found intoxicated or under the influence of drugs while on duty, it is the duty of the board to make a thorough investigation of the charge, and upon satisfactory proof of such charge to revoke the license of said engineer.

History: En. Sec. 561, Pol. C. 1895; re-en. Sec. 1650, Rev. C. 1907; amd. Sec. 10, Ch. 30, L. 1913; re-en. Sec. 2721, R. C. M. 1921; amd. Sec. 9, Ch. 225, L. 1971.

Amendments

The 1971 amendment inserted "or under the influence of drugs"; substituted "board" for "inspector or assistant inspector"; and made minor changes in phraseology.

69-1511. (2722) Certificate of inspection—penalty for wrongfully issuing certificate of inspection or licenses. In making an inspection of the boilers and machinery herein provided for, the inspectors may act jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under the seal of the inspector of boilers and safety. Any inspector or assistant inspector who willfully and feloniously certifies regarding any boilers or their attachments, or grants a license to any person to act as engineer contrary to the provisions of this article, is punishable under the provisions of section 94-35-214. All certificates of inspection, operating certificates and engineer's licenses must be displayed in a conspicuous place in the boiler room.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R. C. M. 1921; amd. Sec. 10, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "in-

spector of boilers and safety" for "boiler inspector's office" at the end of the first sentence; deleted "steam" before "boilers" in the second sentence; and added the third sentence.

69-1512. (2733) Fees for inspection or examination. (1) All fees for inspection are to be paid to the industrial accident board in accordance with the following schedule based on safety valve setting:

(a) to (g). * * * [Same as parent volume.]

In case of the failure of the owner, manager or person in charge of any boiler to pay such fee to the industrial accident board, the board shall initiate the necessary legal action to collect said fee. Failure of any person to immediately abide with results of such board action shall be

deemed guilty of a misdemeanor and punished as provided by section 69-1507.

(2) Whenever, upon request of the owner or operator of any boiler it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law, in addition to the fees herein prescribed, shall be charged and collected by the industrial accident board.

(3) Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(a) to (g). * * * [Same as parent volume.]

(4) Each application shall be accompanied by a payment equal to fifty per cent (50%) of the license fee for which application is being made; said payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

In case of the failure of any applicant to successfully pass an examination, forty-five (45) days must elapse before he can again be examined for license.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971.

Amendments

The 1971 amendment changed the preliminary paragraph of subsection (1) to provide for payment to the industrial accident board instead of the state inspector of boilers; inserted "based on safety valve setting" at the end of the preliminary paragraph of subsection (1); substituted "the board shall initiate the necessary legal action to collect said fee" for "said inspector is authorized to seal the firebox of said boiler, and said seal shall not be removed until said fee is paid and the written order of the inspector authorizing its removal is received by said owner or manager" at the end of the first sentence

of the final paragraph of subsection (1); substituted "Failure of any person to immediately abide with results of such board action" for "Any person who tampers with or removes such seal without such written order" at the beginning of the second sentence of the final paragraph of subsection (1); substituted "by the industrial accident board" for "by the inspector at the time such special inspection is made" at the end of subsection (2); inserted a new paragraph now appearing as the first paragraph of subsection (4); reduced the waiting time required by the second paragraph of subsection (4) from 90 to 45 days; deleted from the end of the section sentences reading "But the inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineers' licenses must be displayed in a conspicuous place in the engine room"; and made minor changes in phraseology.

69-1513. (2724) Review of license rejection. If any person who has applied for a license under the provisions of this article, and has been rejected, feels aggrieved, he may at any time after the lapse of ten days, and within forty-five (45) days after the date of his rejection, in writing set forth the causes of his grievance and request a board review. Such request must be addressed to the board and shall be signed by the rejected applicant. Within two days after receiving such request, it is the duty of the board to notify the applicant in writing that on a certain day, which shall not be less than five nor more than thirty (30) days after the date the board receives said written request, the committee shall review and evaluate the application. The applicant may appear in person at

said review if he so desires. At least two days before the day set for the review the applicant may designate in writing to the board the name of an engineer holding a valid license of equal or higher grade with the one applied for, and such engineer may present himself in behalf of the applicant upon the day and at the hour fixed for the review.

History: En. Sec. 564, Pol. C. 1895; re-en. Sec. 1653, Rev. C. 1907; re-en. Sec. 2724, R. C. M. 1921; amd. Sec. 12, Ch. 225, L. 1971.

Amendments

The 1971 amendment rewrote this section so as to provide for board review rather than re-examination by the inspector, and made numerous changes. For prior text, see parent volume.

69-1514. (2725) Board decision. After said review is completed, and if a majority of the committee decides that such applicant is entitled to the license he has applied for, the board shall without delay issue a license accordingly, but if a majority of the committee rejects the applicant, it is a final rejection, and he must not be granted another examination for the space of forty-five (45) days after such last rejection, when he may again apply as provided by section 69-1512.

History: En. Sec. 565, Pol. C. 1895; re-en. Sec. 1654, Rev. C. 1907; re-en. Sec. 2725, R. C. M. 1921; amd. Sec. 13, Ch. 225, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

69-1515. (2726) Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler. (1) This act shall not apply to boilers under federal control. The provisions of this act requiring inspections, inspection fees and certificates shall not apply to steam heating boilers operated at not over fifteen (15) pounds per square inch gauge pressure in private residences or apartments of six (6) or less families or to hot water heating or supply boilers operated at not over fifty (50) pounds per square inch gauge pressure and temperatures not over two hundred fifty degrees Fahrenheit (250°F) when in private residences or apartments of six (6) or less families. Locomotives, commonly known as dinky engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinky locomotives shall be required to hold traction licenses. No persons operating any of the engines or boilers hereinbefore exempted from the operation of this article shall be required to procure license from the board.

(2) Any person purchasing any boiler whether traction or stationary shall be entitled to receive from the seller the certificates of inspection issued on such boiler and any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten (10) days after such purchase, report the fact of such purchase to the board and shall notify the board as to where said boiler will be installed and operated. Any person failing to comply with the

provisions of this section shall be deemed guilty of a misdemeanor. All other boilers and steam engines, except as herein exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R. C. M. 1921; amd. Sec. 1, Ch. 140, L. 1923; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971.

Amendments

The 1971 amendment reduced the maximum pressure specified by the second sentence of subsection (1) with temperatures up to 250 degrees from 160 to 50 pounds per square inch; deleted from subsection (1) a third sentence reading "Locomotives used on railroads conducting a general business in hauling passengers and freight do not come under the pro-

visions of this article"; deleted from the beginning of subsection (2) two sentences reading "It shall be the duty of the owner and user of any traction engine or boiler on wheels to notify the inspector of the location of such boiler on or before the first day of June of each year. Any owner or user of such traction engine or boiler on wheels who shall fail to notify the inspector as herein provided shall be deemed guilty of a misdemeanor"; deleted "steam" before "boiler" in three places in subsection (2); substituted references to the board for references to the boiler inspector in the first sentence of subsection (2); and made minor changes in phraseology.

69-1516. (2727) Certificates must be renewed yearly—failure to renew. All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. Any engineer failing to renew his license as herein provided, or within at least thirty days after the date of expiration shall be assessed the fee for the original license of the same grade, before the license will be reissued. Any engineer failing to renew his license within twelve months of the date of expiration, must reapply for an engineer's license as required by the provisions of section 69-1509; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have ninety (90) days from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R. C. M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963; amd. Sec. 15, Ch. 225, L. 1971.

Amendments

The 1971 amendment deleted a second

sentence reading "The fee for renewal is two dollars (\$2.00) in all cases"; inserted that part of the third sentence preceding the proviso; increased the time allowed for renewal after discharge from military service from sixty to ninety days; deleted a second paragraph, for text of which see parent volume; and made minor changes in phraseology.

69-1517. (2728) Operation of boiler or steam engine without license. It is unlawful for any person in this state to operate a stationary boiler or steam engine, or any boiler or steam engine other than engines and boilers exempted by the provisions of section 69-1515, without a license granted under the provisions of this article. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section. But in case of accident, sickness, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of an engine or boiler, the owner, renter, or user may, for fifteen days employ any person of the age of eighteen years or over whom he may consider compe-

tent to run the engine or boiler, although such person so employed may not be the holder of an engineer's license, he shall have reasonable qualifications acceptable to the board. The person so employing the unlicensed engineer shall immediately notify the board. But no owner, renter, or user of boilers or steam machinery shall be allowed to so employ unlicensed engineers for more than fifteen days in any one calendar year. And it shall be unlawful, except as stated in this section, for any person, firm, or corporation to employ any person not duly licensed as an engineer, within the meaning of this act, to run or operate any of the boilers or engines subject to the provisions of this act.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R. C. M. 1921; amd. Sec. 16, Ch. 225, L. 1971.

Amendments

The 1971 amendment deleted "railroad locomotives or other" before "engines and boilers exempted" in the first sentence; deleted "steam" before "engine or boiler" in two places; deleted "refusal to work" after "sickness" in the third sentence; de-

leted "operated in remote districts, which would retard the work to be performed" after "engine or boiler" in the first part of the third sentence; added "he shall have reasonable qualifications acceptable to the board" at the end of the third sentence; substituted "board" for "inspector or assistant inspector" at the end of the fourth sentence; inserted "boilers or" before "steam machinery" in the fifth sentence; and made minor changes in phraseology.

69-1518. (2729) Repealed.

Repeal

Section 69-1518 (Sec. 7, Ch. 32, L. 1905; Sec. 16, Ch. 30, L. 1913), relating to sale

of secondhand boilers, was repealed by Sec. 24, Ch. 225, Laws 1971.

CHAPTER 16—HOISTING ENGINES—LICENSE OF OPERATORS

Section

- 69-1601. Operators of hoisting engines must procure licenses.
- 69-1602. Application and fee for license—renewal and revocation of license.
- 69-1603. Scope of license—exemptions.
- 69-1604. First and second-class licenses—qualifications of applicant.
- 69-1607. Penalty for operating machinery without license.

69-1601. (2730) Operators of hoisting engines must procure licenses.

(1) It shall be unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel in industrial operations or on construction projects, or any air compressor operated by any power without first obtaining a license therefor from the board as herein provided. Except that in emergencies the provisions of section 69-1517 relating to the employment of unlicensed engineers shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engines shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel in industrial operations or on construction projects.

(3) Second-class hoisting engines shall be licensed to operate hoisting engines driven by any power and not in excess of one hundred (100) brake horsepower used in the lowering or hoisting of personnel in industrial operations or on construction projects.

History: En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R. C. M. 1921; amd. Sec. 17, Ch. 225, L. 1971.

Amendments

The 1971 amendment designated the

former provision as subsection (1); completely rewrote the first sentence of subsection (1), for previous text of which see parent volume; and added subsections (2) and (3).

69-1602. (2731) Application and fee for license—renewal and revocation of license. Application for such licenses shall be made to the board in the same manner, and the same fee shall be charged therefor as now required by law for obtaining a license to operate steam engines and boilers, and such license shall be given for a period of one year from the date of issuance thereof, and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines or boilers; provided, that the board shall have the right to revoke any license issued under the provisions of this act for any of the reasons for which the board could revoke a license to operate steam engines and boilers.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R. C. M. 1921; amd. Sec. 18, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted references to the board for references to the state boiler inspector and made minor changes in phraseology.

69-1603. (2732) Scope of license—exemptions. (1) A license granted under the provisions of this act shall entitle the holder thereof to operate any of the machinery named in section 69-1601, and the license shall specify on its face such machinery, but no license issued hereunder shall authorize or qualify the person to whom issued to operate a boiler or steam engine.

(2) The provisions of this act shall not apply to hoisting engines or elevators under federal control or to operating elevators in completed private or public buildings.

History: En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R. C. M. 1921; amd. Sec. 19, Ch. 225, L. 1971.

former provisions as subsection (1); deleted former second and third sentences, for text of which see parent volume; added a new subsection (2); and made minor changes in phraseology.

Amendments

The 1971 amendment designated the

69-1604. (2733) First and second-class licenses—qualifications of applicant. (1) Each applicant for a hoisting engineer's license shall meet the following minimum requirements for the class of license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of license for which application is being made.

(a) Applicants for second-class hoisting engineer's license shall have no less than two years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid second-class or first-class license and successfully pass a written examination prescribed by the board and has passed his twentieth birthday and is

found to be competent to operate hoisting equipment in this classification shall be granted a second-class hoisting engineer's license.

(b) Applicants for first-class hoisting engineer's license shall:

(1) Have no less than three years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the board and has passed his twenty-first birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license; or

(2) Hold a valid second-class license and have no less than six (6) months' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the board and has passed his twenty-first birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license.

(c) Applicants for first or second-class hoisting engineer's license holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the board and is found to be competent to operate hoisting machinery in that classification shall be granted a license in that classification.

(d) Applicants for first or second-class hoisting engineer's license holding a valid first or second-class engineer's license for the operation of boilers, steam machinery and hoisting engines for the state of Montana prior to enactment of this act shall, upon application during a period not to exceed twelve (12) months after enactment of this act, be granted a hoisting engineer's license in that classification.

History: En. Sec. 4, Ch. 104, L. 1915;
re-en. Sec. 2733, R. C. M. 1921; amd. Sec.
20, Ch. 225, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

Compiler's Notes

This section as enacted contained no subsection (2).

69-1605. (2734) Repealed.

Repeal

Section 69-1605 (Sec. 5, Ch. 104, L. 1915), relating to machinery which a li-

censee is qualified to operate, was repealed by Sec. 24, Ch. 225, Laws 1971.

69-1607. (2736) Penalty for operating machinery without license. Every person who operates any of the engines and machinery named in section 69-1601 for which a license is required, without first obtaining a license as required by the provisions of this act, and every owner, employer, or manager of any such engines or machinery who permits any unlicensed person to operate the same, or any person who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 104, L. 1915;
re-en. Sec. 2736, R. C. M. 1921; amd. Sec.
21, Ch. 225, L. 1971.

Amendments

The 1971 amendment deleted "know-
ingly" before "permits any unlicensed
person."

CHAPTER 17—TRACTION ENGINES—CAPACITY—INSPECTION

- 67-1701. Computation of capacity of steam traction engines—marking on engines.
69-1702. Inspection—fees.

69-1701. (4209) Computation of capacity of steam traction engines—marking on engines. The capacity or initial power of all steam traction engines or machinery propelled or operated by steam, when sold or offered for sale within this state, must be computed and determined by the draw-bar horsepower; that is, the initial pulling power of such engines or machinery, and not otherwise; and such power or capacity shall be plainly engraved in figures with the letters "H. P." on a metallic templet or plate, which templet or plate shall, before such engine or machine is sold or offered for sale, be securely fastened thereto, in such manner and place and of sufficient size as to be easily seen and read. And all new engines or machinery named herein shall be engraved or branded with the shop number, which shall be in some place easily observed.

History: En. Sec. 1, Ch. 125, L. 1913;
re-en. Sec. 4209, R. C. M. 1921; amd. Sec.
22, Ch. 225, L. 1971.

Amendments

The 1971 amendment inserted "steam"

before "traction engines" near the begin-
ning of the section; substituted "operated
by steam" for "operated by gas, oil, or
any product of oil" in the first sentence;
and made a minor change in phraseology.

69-1702. (4210) Inspection—fees. Inspection of steam traction boilers and fees for inspection shall be in accordance with the applicable requirements of section 69, chapter 15.

History: En. Sec. 2, Ch. 125, L. 1913;
re-en. Sec. 4210, R. C. M. 1921; amd. Sec.
23, Ch. 225, L. 1971.

Amendments

The 1971 amendment completely rewrote
this section. For prior text, see parent
volume.

Repealing Clause

Section 24 of Ch. 225, Laws 1971 read
"Sections 69-1518, 69-1605 and 69-1703 are
hereby repealed."

69-1703. (4211) Repealed.

Repeal

Section 69-1703 (Sec. 3, Ch. 125, L.

1913), establishing a penalty, was repealed
by Sec. 24, Ch. 225, Laws 1971.

CHAPTER 19—EXPLOSIVES—REGULATION OF MANUFACTURE, STORAGE, SALE AND POSSESSION

Section

- 69-1931. Destructive device—explosive defined.
69-1932. Possession of destructive device or explosive with felonious intent—penalty.

69-1931. Destructive device—explosive defined. (1) "Destructive device" as used in this chapter, shall include, but is not limited to, the following weapons:

(a) Any projectile containing any explosive or incendiary material or any other chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns.

(b) Any bomb, grenade, explosive missile, or similar device or any launching device therefor.

(c) Any weapon of a caliber greater than .60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun or shotgun ammunition.

(d) Any rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or any launching device therefor, and any rocket, rocket-propelled projectile or similar device containing any explosive or incendiary material or any other chemical substance, other than the propellant for such device, except such devices as are designed primarily for emergency or distress signaling purposes.

(e) Any breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive" as used in this chapter, shall mean any explosive defined in section 69-1901, R.C.M., 1947.

History: En. Sec. 1, Ch. 304, L. 1971.

sives and destructive devices with intent to injure persons or property; setting penalties therefor.

Title of Act.

An act relating to possession of explo-

69-1932. Possession of destructive device or explosive with felonious intent—penalty. (1) Every person who, with intent to commit a felony, has in his possession any destructive device or any explosive on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of a felony, and shall be punishable by imprisonment in the state prison for a period of not more than ten (10) years.

History: En. Sec. 2, Ch. 304, L. 1971.

Compiler's Notes

This section as enacted contained no subsection (2).

CHAPTER 21—BUILDING AND MOBILE HOME CONSTRUCTION STANDARDS

Section

69-2121. Definitions.

69-2122. Statement of policy—rule-making power.

69-2123. Compliance with the council's rules.

69-2124. Fees.

69-2106. State building code council, etc.

Cross-References

Council abolished and functions transferred, sec. 82A-1202(6).

69-2108. State controller to administer act.**Cross-References**

Controller's functions transferred to department of law enforcement and public safety, sec. 82A-1203(2).

69-2121. Definitions. As used in this act, unless the context clearly requires otherwise:

(1) "Council" means the state building code council, as defined by section 69-2106, R.C.M. 1947.

(2) "Mobile home" means any dwelling unit larger than two hundred fifty-six (256) square feet in area which is either wholly or in substantial part manufactured at an off-site location and any movable or portable dwelling over thirty-two (32) feet in length and over eight (8) feet wide, constructed to be towed on its own chassis and designed without a permanent foundation for year-round occupancy, which includes one (1) or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or of two (2) or more units separately towable but designed to be joined into one (1) integral unit, as well as a portable dwelling composed of a single unit.

(3) "Recreational vehicle" means any movable or portable dwelling primarily designed as temporary living quarters for recreational, camping or travel use which either has its own motive power or is mounted on or drawn by another vehicle and which is less than thirty-two (32) feet in length.

History: En. Sec. 1, Ch. 348, L. 1971.

Title of Act

An act to establish uniform construction standards in mobile homes.

69-2122. Statement of policy—Rule-making power. (a) Mobile homes and recreational vehicles, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of mobile homes and recreational vehicles, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this state to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new mobile homes and recreational vehicles which are not so constructed as to provide reasonable safety and protection to their owners and users.

(b) The council shall, not later than January 1, 1972, promulgate rules and regulations embodying the fundamental principles adopted, recommended, or issued as USAS A119.1 and USAS A119.2 and amended from time to time by the United States of America Standards Institute (USASI), successor to the American Standards Association (ASA) and American National Standards applicable to mobile homes and recreational vehicles as defined herein.

History: En. Sec. 2, Ch. 348, L. 1971.

69-2123. Compliance with the council's rules. No person, firm or corporation may manufacture, sell, or offer for sale any mobile home or recreational vehicle which has been constructed more than twelve (12) months after the effective date of this act, unless such mobile home or recreational vehicle, its components, systems and appliances have been constructed and assembled in accordance with the standards herein defined. Any mobile-home or recreational-vehicle unit which has been approved by the council shall be deemed to be in full compliance with the standards and rules and regulations prescribed in this act. All mobile home or recreational vehicle units thus approved shall be acceptable as meeting the requirements of this act throughout the state of Montana without further inspection or fees except for zoning, utility connections and foundation permits required by local ordinance.

History: En. Sec. 3, Ch. 348, L. 1971.

69-2124. Fees. The council shall establish a schedule of fees for the inspection of plans and specifications for mobile homes or recreational vehicles and for the inspection of individual units. The council may utilize independent testing laboratories or the agencies of other states to determine if approved models of mobile homes or recreational vehicles are being constructed in accordance with the approved plans and specifications for said models.

History: En. Sec. 4, Ch. 348, L. 1971.

CHAPTER 22—BLOOD AND BLOOD PRODUCTS

Section

69-2203. Medical use of blood and blood products declared service and not sale—immunity of physicians and hospitals.

69-2204. Immunity of blood banks.

69-2205. Labeling of containers by blood banks required.

69-2203. Medical use of blood and blood products declared service and not sale—immunity of physicians and hospitals. The furnishing of, and the injecting or transfusing into the human body, of whole blood, plasma, blood products, and blood derivatives, by a hospital or doctor, of any such substances, obtained by such hospital or doctor so furnishing, injecting or transfusing the same, from any source or sources which said hospital or doctor is not directly or indirectly financially interested in, or has any control over, is hereby declared not to be a sale of such whole blood, plasma, blood products, or blood derivatives for any purpose or purposes, and no physician or hospital may be held liable, in the absence of fault or negligence on the part of such a hospital or doctor for injuries resulting from the furnishing or performing of such services.

History: En. Sec. 1, Ch. 284, L. 1971.

Title of Act

An act establishing that the use of certain whole blood, plasma, blood products, and blood derivatives by physicians and hospitals for the purpose of injecting or transfusing any of them into the human body is a service and not a sale; pro-

viding that blood banks shall not be liable for such products disbursed by them in the absence of negligence if such products have been tested by certain testing procedures and found by such tests to not be dangerous to the health of a prospective recipient, and requiring the labeling by such blood banks of such products sold.

69-2204. Immunity of blood banks. No blood bank may be held liable in the absence of fault or negligence for injuries resulting from the injecting or transfusing of whole blood, plasma, blood products, or blood derivatives supplied by any such blood bank to any hospital or physician if such blood products so furnished have been tested by the latest testing procedures in accordance with recommendations of the American association of blood banks and by such test is not found to be dangerous to the health of the recipient of such blood products.

History: En. Sec. 2, Ch. 284, L. 1971.

69-2205. Labeling of containers by blood banks required. That each container or package containing any whole blood, plasma, blood products, and blood derivatives, sold by a blood bank shall have plainly stamped or printed thereon the fact that the product therein contained was tested as required in section 2 [69-2204] hereof, giving the date of the test and such information as is necessary to designate the type of test made.

History: En. Sec. 3, Ch. 284, L. 1971.

CHAPTER 27—FIREWORKS REGULATION

Section

69-2701. Fireworks prohibited and defined for the purposes of this act.

69-2701. Fireworks prohibited and defined for the purposes of this act. a. * * * [Same as parent volume.]

b. The term "fireworks" shall mean and include any combustible, or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include sky rockets, Roman candles, Daygo bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, sparklers or other fireworks of like construction and any fireworks containing any explosive or flammable compound or any tablets or other device containing any explosive substance. Nothing in this law shall be construed as applying to toy paper caps containing not more than twenty-five hundredths (.25) of a grain of explosive composition per cap, and to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military or navy forces of the United States or of this state, or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, or theatrical, or athletic events.

c. It shall be lawful for any individual, firm, partnership, corporation or association to possess for sale within the state, sell or offer for sale, at retail, or use, within the state of Montana, the permissible fireworks herewith enumerated.

Permissible fireworks shall include dangerous articles and, more speci-

fically, shall include and be limited to the following, but specifically excluding sky rockets, Roman candles and Daygo bombs:

(1) Helicopter type spinners, total pyrotechnic composition not to exceed twenty (20) grams each in weight;

(2) Cylindrical fountains, total pyrotechnic composition not to exceed twenty-five (25) grams each in weight. The inside tube diameter shall not exceed three-fourths ($\frac{3}{4}$) inch;

(3) Cone fountains, total pyrotechnic composition not to exceed fifty (50) grams each in weight;

(4) Wheels, total pyrotechnic composition not to exceed sixty (60) grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes shall not be over one-half ($\frac{1}{2}$) inch;

(5) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred (100) grams each in weight;

(6) Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred (100) grams each in weight. Pyrotechnic composition containing any chlorate shall not exceed five (5) grams;

(7) Firecrackers with soft casings, the external dimensions of which do not exceed one and one-half ($1\frac{1}{2}$) inches in length or one-quarter ($\frac{1}{4}$) inch in diameter, total pyrotechnic composition not to exceed two (2) grains each in weight;

(8) Whistles without report, total pyrotechnic composition not to exceed forty (40) grams each in weight;

It shall be unlawful for any individual under the age of eighteen (18) to possess for sale, sell or offer for sale, within the state of Montana, permissive fireworks herein enumerated.

It shall be unlawful for any wholesaler to sell or offer for sale, within the state of Montana, fireworks except as herein defined. It shall be lawful for said wholesaler, however, to transport said fireworks within the state of Montana for sale outside of the state of Montana.

d. and e. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in the paragraph following the numbered subdivisions in subsection c from twenty-one to eighteen years, and made minor changes in style.

CHAPTER 34—SANITARIANS

Section

- 69-3401. Definitions.
- 69-3402. Administration of chapter.
- 69-3403. Application for registration by examination.
- 69-3404. Fees.
- 69-3405. Revocation or suspension.
- 69-3407. Reciprocity.
- 69-3408. Appeal procedure.
- 69-3409. Service of process.

69-3401. Definitions. "Board" means the Montana state board of health. "Council" means the sanitarians advisory council. "Sanitarian" is a person who is trained in physical, biological and sanitary sciences to carry out inspectional and educational duties in the field of environmental health. "Registered sanitarian" is a sanitarian registered in accordance with the provisions of this act. "Certificate of registration" is a document showing the name of a registered sanitarian, the date of issue, serial number, and bearing the signatures of the designated members of the department hereby authorized to grant such certificate and under the seal of the board. "Department" means the Montana state department of health.

History: En. Sec. 1, Ch. 174, L. 1959; amd. Sec. 1, Ch. 271, L. 1971.

Amendments

The 1971 amendment substituted "sanitarians advisory council" for "sanitarians registration council" in the definition of "Council"; deleted "hereby created" from the end of the definition of "Council"; substituted "health" for "sanitation" at

the end of the definition of "Sanitarian"; substituted "department" for "council" in the definition of "Certification of registration"; substituted "the board" for "said council" at the end of the definition of "Certificate of registration"; deleted the definitions of "Montana association of sanitarians" and "Montana joint merit council"; and added the definition of "Department."

69-3402. Administration of chapter. (1) The board shall assume jurisdiction over all activities and records of what was formerly titled the sanitarians registration council. A department staff sanitarian or sanitarians shall under guidance of the board as to matters of policy be responsible for administration of the provisions of this chapter and serve as secretary for the council. The department shall maintain a record of all registration activities and a register disclosing names, dates, and addresses of all applicants for a certificate. Such register shall constitute prima facie evidence of all matters therein entered. The board may adopt such rules and regulations not inconsistent with this act as it determines are necessary and proper for its function and administration.

(2) The governor shall appoint a sanitarian advisory council to consult with the board in administration of statutes relating to registration of sanitarians. (a) The council shall consist of three (3) registered sanitarians living and working in Montana.

(b) Members of the first council shall serve for one (1), two (2), or three (3) years as designated by the board. After initial appointments, appointed members shall serve for three (3) year terms. Appointments for unexpired terms shall be for the remainder of the term.

(c) The council shall serve without compensation but shall be reimbursed for their actual and necessary traveling and other expenses while engaged in the business of the council.

(d) The council shall appoint a chairman and shall conduct at least two (2) regular meetings each calendar year.

History: En. Sec. 2, Ch. 174, L. 1959; amd. Sec. 2, Ch. 271, L. 1971.

Cross-References

Council abolished and functions transferred, sec. 82A-602(2).

Amendments

The 1971 amendment completely rewrote the section. For prior text, see parent volume.

69-3403. Application for registration by examination. Any person, upon the payment of the fees prescribed herein, may apply to the department for registration on forms provided for that purpose. Each applicant shall submit evidence and prove to the satisfaction of the board that he meets the following qualifications for registration hereunder. (a) That he or she has qualified, as required by the board, and successfully passed the examination for sanitarian 1 classification or higher. (b) The department shall issue a certificate of registration to all applicants who meet the above qualifications. (c) An applicant for examination may, in the discretion of the board, be given a temporary certificate to practice as a registered sanitarian prior to taking the examination. The term of such certificate shall not exceed one (1) year.

History: En. Sec. 3, Ch. 174, L. 1959; amd. Sec. 3, Ch. 271, L. 1971.

Amendments

The 1971 amendment substituted "department" for "council" in the first sentence and clause (b); substituted "board" for "council" in the second sentence and

clause (c); deleted "one of" before "the following qualifications" in the second sentence; deleted "and the joint merit council" after "the board" in clause (a); inserted "classification" in clause (a); deleted the former clause (b); and redesignated former clauses (c) and (d) as clauses (b) and (c).

69-3404. Fees. Applicants for registration shall pay a fee of twenty dollars (\$20.00) at the time of making application. A sanitarian registered under the provisions of this act may renew his certificate by paying the annual fee as set by the board, but not to exceed ten dollars (\$10.00). All fees collected shall be paid to the board held in a special fund and shall be used to defray the cost of administration of this act in accordance with a budget developed by the board. All fees shall be due and payable on or before the first day of July for the current year for which the renewal certificate shall be issued. All certificates shall expire on the renewal date unless renewed prior to such date. Registrations which have lapsed for failure to pay renewal fees may be reinstated under regulations adopted by the board.

History: En. Sec. 4, Ch. 174, L. 1959; amd. Sec. 119, Ch. 147, L. 1963; amd. Sec. 4, Ch. 271, L. 1971.

Amendments

The 1971 amendment deleted "of health"

after "board" and substituted "held in a special * * * the board" for "and deposited * * * registration council" in the third sentence; and substituted "board" for "council" at the end of the last sentence.

69-3405. Revocation or suspension. The board shall have the power to revoke or suspend the certificate of registration of any registrant for unprofessional conduct or the practice of any fraud or deceit in obtaining registration, or any gross negligence, incompetency or misconduct in the practice as a professional sanitarian, or upon the conviction of any crime involving moral turpitude, provided, however, that no revocation of certificate shall become effective until after a hearing, duly noticed, is held and the registrant given the opportunity to appear in person or by counsel and to answer the charges which have been filed against him with the board and to produce evidence and witnesses on his behalf and to cross-examine witnesses.

History: En. Sec. 5, Ch. 174, L. 1959; amd. Sec. 5, Ch. 271, L. 1971.

Amendments

The 1971 amendment substituted "board"

for "council" in two instances; and substituted "as a professional sanitarian" for "of professional sanitation" near the middle of the section.

69-3407. Reciprocity. The department shall issue a certificate of registration without examination to any person who makes application on forms prescribed and furnished by the department, pays the registration fee of twenty dollars (\$20) and submits satisfactory proof that: (1) he is of good moral character; (2) he is registered as a sanitarian in a state in which the qualifications for registration are not lower than the qualifications for registration in this state at the time he applies for registration.

History: En. Sec. 7, Ch. 174, L. 1959;
amd. Sec. 8, Ch. 271, L. 1971.

Amendments

The 1971 amendment substituted "department" for "council" in two places.

69-3408. Appeal procedure. Any party aggrieved by any decision or act of the board may seek a review thereof in the district court of the first judicial district of the state of Montana in the manner set forth in sections 93-9001 to 93-9011, inclusive, R.C.M., 1947, and said court shall affirm, reverse, or modify the findings of said board in accordance with law.

History: En. Sec. 8, Ch. 174, L. 1959; for "council"; and made a minor change
amd. Sec. 7, Ch. 271, L. 1971. in phraseology.

Amendments

The 1971 amendment substituted "board"

69-3409. Service of process. When any petition or complaint is the first judicial district of the state of Montana in the manner set forth upon the said board by delivering to and leaving with the board a true copy of the summons, writ, or order, as the case may be, and a true copy of the complaint, petition, or application upon which such summons, writ, or order was based.

History: En. Sec. 9, Ch. 174, L. 1959; for "Montana sanitarians registration
amd. Sec. 8, Ch. 271, L. 1971. council" and "council."

Amendments

The 1971 amendment substituted "board"

CHAPTER 36—AMBULANCE SERVICE

Section

- 69-3604. Findings and purposes.
- 69-3605. Definitions.
- 69-3606. License required.
- 69-3607. Fee—term of license.
- 69-3608. Cancellation or denial of licenses—procedure.
- 69-3609. Rules and regulations—co-operative agreements.
- 69-3610. Inspections.
- 69-3611. Authority of board to issue subpoenas.
- 69-3612. Penalty.
- 69-3613. License fee—supersedes other fees.

69-3604. Findings and purposes. The public welfare requires the establishment of minimum uniform standards for the operation of ambulance

services as defined in section 2 [69-3605] of this act, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate improper care that may endanger the health of the public. The regulation of establishments providing such service is in the interest of social well-being, and the health and safety of the state and all its people.

History: En. Sec. 1, Ch. 387, L. 1971.

standards and regulations for ambulance services as required by public interest.

Title of Act

An act to establish minimum uniform

69-3605. Definitions. As used in this act, unless the context clearly indicates otherwise: (1) "Ambulance" means any privately or publicly owned motor vehicle that is especially designed or constructed, and equipped, which is maintained and used for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with the provisions of this act, but does not include any such motor vehicle owned by, or operated under the direct control of the United States or the state of Montana.

(2) "Ambulance service" means any person who operates an ambulance.

(3) "Attendant" means a trained or otherwise qualified individual responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

(4) "Attendant-driver" means a person who is qualified as an attendant and a driver.

(5) "Driver" means an individual who drives an ambulance.

(6) "Dual purpose police patrol car" means a vehicle, operated by a police department, which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

(7) "Executive officer" means the executive officer of the Montana state department of health or his designated official.

(8) "Board" means the board of health of the state of Montana.

(9) "License officer" means the executive officer of the Montana state department of health or his designated official.

(10) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(11) "Person" means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose or organization of any kind, including any governmental agency other than the United States or the state of Montana.

History: En. Sec. 2, Ch. 387, L. 1971.

69-3606. License required. (1) Every person conducting or operating an ambulance service shall procure a license issued by the department. A separate license shall be required for each establishment.

(2) Applications for a license shall be made in writing to the department on forms specified by the department.

(3) Licenses shall be granted as a matter of right, unless conditions exist as specified by this act which are grounds for a cancellation or

denial of a license. The applicant may apply for a hearing and judicial review as specified by this act upon being denied a license or upon cancellation.

History: En. Sec. 3, Ch. 387, L. 1971.

69-3607. Fee—term of license. (1) There shall be paid to the department with each application for a license or for renewal of a license, an annual license fee of five dollars (\$5). The department shall deposit fees with the state treasurer to the credit of the state general fund.

(2) Each license shall expire on December 31 following its date of issue, unless cancelled for cause. Renewal may be obtained by paying the required annual license fee. The license shall not be transferable nor be applicable to any premises other than that for which originally issued.

History: En. Sec. 4, Ch. 387, L. 1971.

69-3608. Cancellation or denial of licenses—procedure. (1) The executive officer may cancel any license if he finds that the licensee has violated provisions or regulations of this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the executive officer of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval thereof by the executive officer, shall be a bar to prosecution for violation.

(2) The executive officer shall not deny or cancel any license without:

(a) Delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved.

(b) An opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or cancelled. In such case, the licensee shall make written request to the executive officer of the department for a hearing within ten (10) days after notice of the grounds or charges has been received. If the board finds that the violations of provisions or regulations of this act do not constitute a danger to the public health and would produce a hardship without equal or greater benefit to the public, the board may grant an exception to the licensee for a period not to exceed one (1) year, during which time a license would not be denied the licensee nor would his license be canceled. Subsequent exceptions may be granted the licensee, each for a period not to exceed one (1) year, and each after a hearing before the board.

(3) Upon cancellation of a license, the license certificate shall be returned to the executive officer for destruction or deletion as the executive officer may direct in his notice of cancellation.

(4) Any order made by the executive officer after hearing, as provided herein, denying or canceling any license may be reviewed by application for writ of review (certiorari) commenced in the district court of the county in which the licensed premises are located, within ten (10) days from the date of notice in writing of the executive officer's order of denial or canceling such license has been served upon him.

(5) Whenever the department shall furnish evidence to the county

attorney of any county in this state, the county attorney shall prosecute any person, persons, firm, or corporation violating any provisions of this act, or any rules or regulations effective under this act.

History: En. Sec. 5, Ch. 387, L. 1971.

69-3609. Rules and regulations—co-operative agreements. (1) The board shall prescribe and enforce rules and regulations which are necessary to carry out the provisions of this act. These rules and regulations shall relate to ambulance equipment, training, operations (records), personnel, cleanliness, and insurance.

(2) No rules or regulations shall be effective until a public hearing has been held for review of the rules and regulations. Notice of the public hearing shall be sent by ordinary mail at least thirty (30) days before the hearing to all Montana licensed operators along with a copy of the proposed regulations.

(3) The department may enter into co-operative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

(4) Pursuant to the provisions of this act, required equipment in an ambulance which is maintained and regularly used for the transportation of patients shall consist of the minimal equipment for ambulances as adopted by the American college of surgeons, March, 1967, and required training shall be set at a level of advanced American Red Cross first aid or its equivalent. Nothing in this section shall preclude the use of any vehicle for the transportation of the injured in instances of emergency, need, or disaster situations, and the board shall not prescribe and enforce any rules and regulations related to ambulance equipment and training which exceed these requirements.

History: En. Sec. 6, Ch. 387, L. 1971.

69-3610. Inspections. (1) The department shall make all necessary investigations and inspections for enforcement of this act. Each authorized representative shall make regular inspections as the rules and regulations of the board may direct, and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing at such times and in such manner as the board may direct.

(2) All persons authorized by this act or by regulations adopted under this act shall have free access at all reasonable hours to any of the establishments listed and defined in section 2 [69-3605] of this act for the purpose of making inspections.

History: En. Sec. 7, Ch. 387, L. 1971.

69-3611. Authority of board to issue subpoenas. In any proceeding under this act, the board may administer oaths and issue subpoenas, summon witnesses, and take testimony of any person within the state of Montana.

History: En. Sec. 8, Ch. 387, L. 1971.

69-3612. Penalty. Any person violating any provision of this act or regulation made hereunder shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for the first offense, and not less than seventy-five dollars (\$75) nor more than two hundred dollars (\$200) for the second offense; and for third and subsequent offenses, by a fine of not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) or imprisonment in the county jail not to exceed ninety (90) days.

History: En. Sec. 9, Ch. 387, L. 1971.

69-3613. License fee—supersedes other fees. Payment of the license fee stipulated in this act shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this act.

History: En. Sec. 10, Ch. 387, L. 1971.

Separability Clause

Section 11 of Ch. 387, Laws 1971 read "Severability. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid

in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 12 of Ch. 387, Laws 1971 read "Effective date. This act is effective January 1, 1972."

CHAPTER 39—AIR POLLUTION

69-3908. Air pollution control advisory council, etc.

Cross-References

Council continued after reorganization, sec. 82A-606.

CHAPTER 41—STATE BOARD OF HEALTH

Section

69-4118. Sanitary inspections of schoolhouses, churches, jails and other facilities for assemblages of persons.

69-4103. State board of health, etc.

Cross-References

Board renamed and continued, sec. 82A-605(1).

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

69-4106. Functions, powers and duties of state board.

Cross-References

Board functions transferred to depart-

ment of health and environmental sciences, sec. 82A-603(2).

69-4118. Sanitary inspections of schoolhouses, churches, jails and other facilities for assemblages of persons. (1) The department shall make sanitary inspections of schoolhouses, churches, theaters, jails and other buildings or facilities where persons assemble. If the facility is found unsanitary, the department shall direct that conditions be corrected

within a reasonable time. If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.

(2) Either the state board or a local board of health shall bring an action to correct the unsanitary conditions in the way provided by law for abating a public nuisance.

History: En. Sec. 18, Ch. 197, L. 1967;
amd. [Sec. 1], Ch. 336, L. 1971.

Amendments

The 1971 amendment inserted "jails" in the first sentence of subsection (1).

CHAPTER 42—OCCUPATIONAL HEALTH

Section

- 69-4206. Short title.
- 69-4207. Declaration of policy and purpose.
- 69-4208. Definitions.
- 69-4209. Administration—state department of health.
- 69-4210. Advisory committee.
- 69-4211. Powers of board.
- 69-4212. Permits.
- 69-4213. Inspection.
- 69-4214. Emissions prohibited.
- 69-4215. Enforcement.
- 69-4216. Emergency procedure.
- 69-4217. Variances.
- 69-4218. Hearings and judicial review.
- 69-4219. Confidentiality of records.
- 69-4220. Application for federal aid.
- 69-4221. Penalties.

69-4201 to 69-4203. Repealed.

Repeal

Sections 69-4201 to 69-4203 (Secs. 19 to 21, Ch. 197, L. 1967), relating to duties and powers of the state department of

health with respect to occupational diseases, were repealed by Sec. 18, Ch. 316, Laws 1971. For present law, see section 69-4206 et seq.

69-4205. Repealed.

Repeal

Section 69-4205 (Sec. 23, Ch. 197, L. 1967), providing a penalty, was repealed

by Sec. 18, Ch. 316, Laws 1971. For present law, see sec. 69-4221.

69-4206. Short title. This act shall be known and may be cited as the "Occupational Health Act of Montana."

History: En. Sec. 1, Ch. 316, L. 1971.

Title of Act

An act providing for the conservation of the health of workers of the state;

providing for prevention, abatement, and control of occupational diseases; providing penalties for violation; and repealing sections 69-4201, 69-4202, 69-4203, and 69-4205, R. C. M., 1947.

69-4207. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this act to achieve and maintain such conditions at the work place as will protect human health and safety, and to the greatest degree practicable, foster the comfort and convenience of the workers at any work place of this state and enhance their productivity and well-being.

(2) To these ends it is the purpose of this act to provide for a co-ordinated statewide program of abatement and control of occupational

diseases, for an appropriate distribution of responsibilities among the state and local units of government, and to provide a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 316, L. 1971.

69-4208. Definitions. As used in this act:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Emission" means a release into the workspace atmosphere of air contaminants or pollutants.

(3) "Occupational disease" means an illness, impairment or disability that:

(a) Arises from the person's employment.

(b) Is caused by exposure to a substance or industrial practice which is hazardous to health.

(c) Has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases.

(d) Is not the result of a person's contact or activities outside his employment.

(4) "Worker" is a person gainfully employed at any place.

(5) "Work place" is any place or location where a person is gainfully employed.

(6) "Occupational health" is a field of specialization concerned with those problems of health maintenance, productivity and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Threshold limit values" shall mean airborne concentrations of substances to which it is believed that nearly all workers may be repeatedly exposed day after day without adverse effect.

(8) "Pollutant" shall mean air contaminants, heat, noise, vibration and ionizing radiation and nonionizing radiation.

(9) "Sanitary facilities" shall mean toilets, showers, dressing rooms, lunch rooms, sewage disposal systems and potable water systems.

(10) "Department" shall mean the Montana state department of health.

(11) "Board" shall mean the Montana state board of health.

(12) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.

(13) "Advisory committee" means the occupational health advisory committee created by this act.

(14) "Director" means the director of the occupational health program, a position created by this act.

(15) "Executive officer" means the chief administrative officer of the state department of health.

History: En. Sec. 3, Ch. 316, L. 1971.

69-4209. Administration—state department of health. Except as otherwise provided, the department, acting under the guidance of the board

as to matters of policy, is responsible for administration of the provisions of this act. The executive officer shall appoint a director of the occupational health program to perform the duties and powers conferred upon the department by this act. The director shall meet requirements established by the board. The executive officer may delegate to any employee of the department such duties and functions as he deems necessary for the proper and efficient administration of this act, and the executive officer shall have the authority with the approval of the board and within the limitation of funds, to hire additional employees and to discharge same for cause.

History: En. Sec. 4, Ch. 316, L. 1971.

69-4210. Advisory committee. (1) There is hereby created an occupation health advisory committee hereinafter called the advisory committee. The advisory committee shall consist of seven (7) members as follows:

- (a) A representative of labor.
- (b) A representative of agriculture.
- (c) A representative of the manufacturing industry.
- (d) A practicing physician licensed in Montana.
- (e) A practicing dentist licensed to practice in Montana.
- (f) A practicing registered professional engineer.
- (g) A lay person.

The chairman shall be elected by the advisory committee from among this number.

(2) Members are appointed by the governor with the advice and consent of the senate. The terms of members shall be four (4) years except that the two (2) initially appointed members shall serve for one (1) year; two (2) shall serve for two (2) years; two (2) shall serve for three (3) years and one (1) shall serve for four (4) years as designated by the governor at the time of making the appointment.

(3) The seven (7) members appointed by the governor to serve on the advisory committee shall each be paid, in addition to actual travel expense, twenty-five dollars (\$25) per day for each day of actual services in the performance of their duties; and all members of the advisory committee shall be reimbursed for travel and other necessary expenses incurred in their official duties as members of the advisory council. The expense and per diem of the members who are appointed by the governor shall be paid from funds made available to the department.

(4) The advisory committee shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him upon receipt of a written request signed by two (2) or more members of the advisory committee. Notice of the time and place for all meetings shall be given in advance to each member of the advisory committee by the secretary. A majority of the members of the advisory committee shall constitute a quorum.

(5) The secretary of the advisory committee shall be a member

of the staff of the state department of health, designated by the executive officer. The secretary shall keep all records of meetings of, and actions taken by, the committee. He shall keep the advisory committee advised as to actions taken by persons in response to recommendations and orders issued under authority of this act and shall perform other duties as determined by the advisory committee, not inconsistent with rules, regulations and policies adopted by authority of this act or specific authority otherwise given the advisory committee.

(6) The advisory committee may consider standards, rules, and regulations as provided in this act and any other matter related to the purposes of the act, which may be submitted to it by the board. It may make recommendations to the board on its own initiative concerning the administration of this act.

History: En. Sec. 5, Ch. 316, L. 1971.

69-4211. Powers of board. In addition to any other powers conferred on it by law, the board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with the provisions of this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at any place or places designated by the board. The board may designate the director as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct the hearing. The board or the director as hearing officer may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue such orders as may be necessary to effectuate the purposes of this act and enforce them by all appropriate administrative and judicial proceedings.

(4) Require access to records relating to emissions.

(5) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of occupational disease.

(7) Encourage voluntary co-operation by persons and affected groups to achieve the purpose of this act.

(8) Encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, preventions, abatement, and control.

(9) Determine by means of field studies and sampling the degree of health hazard at any work place in the state.

(10) Establish threshold limit values of airborne contaminants for the state as a whole within ninety (90) days of passage of this act.

(11) Collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases.

(12) Advise, consult, contract, and co-operate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups.

(13) Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States for the purpose of carrying out any of the functions of this act. Funds received by the board pursuant to this section shall be deposited in the state treasury to the account of the board.

History: En. Sec. 6, Ch. 316, L. 1971.

industry of alleged violations, sec. 82A-602(1)(b).

Cross-References

Department of health and environmental sciences to notify department of labor and

Enforcement functions transferred to department of labor and industry, sec. 82A-1003(2).

69-4212. Permits. (1) The board may, by rule or regulation, prohibit the installation, alteration, or use of any machine, equipment, device or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit therefor has been obtained from it.

(2) The board may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of any permits which it may require pursuant to this section.

(4) If a permit is required, the board must decide within ninety (90) days after receiving application therefor, whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been denied.

History: En. Sec. 7, Ch. 316, L. 1971.

62-4213. Inspection. (1) Any duly authorized officer, employee, or representative of the board may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, where any person or persons are, or will be, employed to ascertain the state of compliance with this act and rules in force pursuant thereto.

(2) No person shall refuse entry or access to any authorized representative of the board who requests entry for purposes of inspection, and who presents appropriate credentials. No person shall obstruct, hamper, or interfere with any such inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

History: En. Sec. 8, Ch. 316, L. 1971.

69-4214. Emissions prohibited. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate or control occupational diseases. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlled

and no emissions in excess thereof shall be lawful. The board may also establish standards for sanitary facilities and lunchrooms.

(2) The board may by rule use any widely recognized measuring system for measuring emissions of pollutants.

(3) Should federal minimum standards of industrial hygiene or occupational health be set by federal law, the board may, if necessary, set more stringent standards by rule or regulation.

History: En. Sec. 9, Ch. 316, L. 1971.

69-4215. Enforcement. (1) Whenever the director has reason to believe that a violation of any provision of this act or rule made pursuant thereto has occurred, he may cause written notice to be served upon the alleged violator or violators, and the facts alleged to constitute a violation thereof, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. Any such order shall become final unless, no later than thirty (30) days after the date of notice is received, the person or persons named therein request in writing a hearing before the board. Upon receipt of such a request, the board shall hold a hearing.

(2) If, after a hearing held pursuant to subsection (1) of this section, the board finds that a violation or violations have occurred, it shall either affirm or modify any order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the emissions involved or for the taking of such other corrective action as it may deem appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) In lieu of issuing the order provided for in subsection (1) of this section, the board may either:

(a) Require that the alleged violator or violators appear before it for a hearing at a time and place specified in a notice, and answer the charges complained of; or

(b) Initiate action pursuant to section 16 [69-4221] of this act.

(4) Nothing in this act shall prevent the board from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with any hearing held pursuant to this section, the board may, and upon application by any party shall, compel the attendance of witnesses and the production of evidence on behalf of all parties.

History: En. Sec. 10, Ch. 316, L. 1971.

69-4216. Emergency procedure. (1) Any other provisions of law to the contrary notwithstanding, if the director finds that a generalized hazard at any work place exists and that it creates an emergency requiring immediate action to protect human health, the director shall order

persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of any such order, the director shall fix a place and time, not later than seventy-two (72) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order of the director.

(2) In the absence of any such generalized condition as that referred to in subsection (1) of this section, if the director finds that emissions from any operation is causing imminent danger to human health, he may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard for the provisions of section 10 [69-4215] of this act. In such event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in section 10 [69-4215] shall apply.

(3) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, whether such power is conferred by statute or constitutional provisions or inheres in the office.

History: En. Sec. 11, Ch. 316, L. 1971.

69-4217. Variances. (1) Any person who owns or is in control of any plant, building, structure process or equipment may apply to the board for an exemption or partial exemption from rules or regulations governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant such exemption or partial exemption if it finds that:

(a) The emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker.

(b) Compliance with the rules and regulations from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(2) No exemption or partial exemption shall be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, and the worker or workers involved.

(3) No exemption or partial exemption pursuant to this section shall be granted for a period to exceed one (1) year, but any such exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, such complaint having been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal the applicant shall give public notice of such application in accordance with rules and regulations of the board. Any renewal pursuant to this sub-

section shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (a) of this section.

(4) An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be in the discretion of the board. However, any person adversely affected by an exemption, partial exemption or renewal granted by the board may obtain judicial review thereof as provided by section 13 [69-4218] of this act.

(5) Nothing in this section and no exemption, partial exemption or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 11 [69-4216] of this act to any person or his property.

History: En. Sec. 12, Ch. 316, L. 1971.

69-4218. Hearings and judicial review. (1) No rule or amendment or repeal thereof shall take effect except after public hearing on due notice, and after the advisory committee has been afforded not less than thirty (30) days prior to publication of the proposed text to comment thereon. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for such hearing.

(2) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to section 11 [69-4216] of this act.

(3) Any person aggrieved by any order of the board may apply for rehearing upon one (1) or more of the following grounds, and upon no other grounds:

(a) The board acted without or in excess of its powers.

(b) The order was procured by fraud.

(c) The order is contrary to the evidence.

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

(4) (a) Within thirty (30) days after the application for rehearing is denied, or, if the application is granted, within thirty (30) days after the decision on the rehearing, any party aggrieved thereby may appeal to the district court of any judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the executive officer of the board, which service shall be made by the delivery of a copy of the notice to such officer, and by filing the original with the clerk of the court to which the appeal is taken. Immediately upon service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing

arguments on the cause, and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence and whether or not the board made error of law prejudicial to the appellant.

(5) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record.

History: En. Sec. 13, Ch. 316, L. 1971.

69-4219. Confidentiality of records. (1) Any records or other information concerning pollutants or operations which are furnished to or obtained by the board, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, shall be only for the confidential use of the board in the administration of this act, unless the owner shall expressly agree to their publication or availability to the general public.

(2) Nothing contained in this section shall be construed to prevent the use of such records or information by the board in compiling or publishing analyses or summaries relating to the general condition at the work place, provided that such analyses or summaries do not identify any owner or operator or reveal any information made otherwise confidential by the provisions of this section.

History: En. Sec. 14, Ch. 316, L. 1971.

69-4220. Application for federal aid. The department may make application for, receive, administer, and expend any federal aid for the control of occupational diseases or the development and administration of industrial hygiene programs related to occupational disease control, provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this act and any other applicable requirements of law.

History: En. Sec. 15, Ch. 316, L. 1971.

69-4221. Penalties. (1) Any person who violates the provisions of this act relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from any source determined as provided herein to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this act) shall be guilty of an offense and subject on account thereof to a fine not to exceed one thousand dollars (\$1,000). Each day of violation shall constitute a separate offense.

(2) Proceedings under this section shall not be a bar to enforcement of this act, or of rules or orders made pursuant thereto, by injunction or other appropriate remedy. The board may institute and maintain in the name of the state any and all such enforcement proceedings.

(3) Nothing in this act shall be construed to abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damage or other relief on account of injury to persons or property and to maintain any section of other appropriate proceeding therefor.

(4) All fines collected shall be deposited to the state general fund.

History: En. Sec. 16, Ch. 316, L. 1971.

mains in effect in all valid applications that are severable from the invalid applications."

Separability Clause

Section 17 of Ch. 316, Laws 1971 read "Severability. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part re-

Repealing Clause

Section 18 of Ch. 316, Laws 1971 read "Sections 69-4201, 69-4202, 69-4203 and 69-4205, R. C. M., 1947, are hereby repealed."

CHAPTER 45—LOCAL BOARDS OF HEALTH

Section

69-4509. Functions, powers and duties of local boards of health.

69-4510. Local health officers—powers and duties.

69-4509. Functions, powers and duties of local boards of health. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or equivalent and appropriate experience as determined by the executive officer and fix his salary;

(b) to (k). * * * [Same as parent volume.]

History: En. Sec. 86, Ch. 197, L. 1967; amd. Sec. 4, Ch. 216, L. 1969; amd. Sec. 1, Ch. 196, L. 1971.

person with a master's degree in public health or equivalent and appropriate experience as determined by the executive officer" in subdivision (1)(a).

Amendments

The 1971 amendment inserted "or a

69-4510. Local health officers—powers and duties. (1) Local health officers, or their authorized representatives, shall:

(a) to (d). * * * [Same as parent volume.]

(e) before the first day of January, April, July and October, give a report to the local board of sanitary conditions in the county, city, city-county or district, together with a detailed account of his activities on forms, and containing information required by the department;

(f) to (j). * * * [Same as parent volume.]

(2). * * * [Same as parent volume.]

(3) A local health officer, who is a physician, may be placed in charge of a communicable disease hospital, but a local health officer, who is a physician, is not required to act as a physician to the indigent. A local health officer, who is not a physician, shall not act as a physician to anyone.

History: En. Sec. 87, Ch. 197, L. 1967; amd. Sec. 2, Ch. 196, L. 1971.

a physician" in two places in the first sentence of subsection (3); added the second sentence to subsection (3); and made minor changes in phraseology and punctuation.

Amendments

The 1971 amendment inserted "who is

CHAPTER 46—VENEREAL DISEASE

Section

69-4610. Information concerning infected persons—release.

69-4610. Information concerning infected persons—release. Information concerning persons infected or reasonably suspected to be infected with venereal disease may only be released to:

- (1) personnel of the state department of health; or
- (2) a physician who has written consent of the person whose record is requested.

For the purposes of this section the term “information” includes all knowledge or intelligence, and all communications of all knowledge or intelligence, oral or written, or in record form, and also includes, but is not limited to, information concerning the location or nature of the activities or work of all local, state, or federal employees, or officers, engaged in venereal disease eradication work, and such personnel are privileged and shall not be required to testify concerning anything within their knowledge or work activities having any relation to venereal disease work. The purpose of this section is to protect and preserve the principle of confidentiality in venereal disease work by public personnel, local, state, and federal, such confidentiality being all important to the success of all venereal disease eradication work and endeavor, and to require that the principle of confidentiality in such work remain inviolate.

History: En. Sec. 106, L. 1967; amd. Amendments
 Sec. 1, Ch. 135, L. 1971.

The 1971 amendment added the paragraph following the numbered clauses.

CHAPTER 48—WATER POLLUTION

Section

- 69-4801. Public policy of the state.
- 69-4802. Definitions.
- 69-4804. Chapter applicable to drainage or seepage from artificial bodies of water privately owned.
- 69-4805. Administration of chapter.
- 69-4806. Pollution unlawful—permits.
- 69-4807.1. Denial, modification, suspension, and revocation of permit—notice—hearing—effective date.
- 69-4808.2. Duties of board of health.
- 69-4809.1. Duties of department of health.
- 69-4810. State water pollution advisory council—creation—members, appointment and term of office.
- 69-4811. State water pollution advisory council—vacancy in office, filling—compensation of members.
- 69-4812. State water pollution advisory council—officers—meetings—quorum—designating of deputy by member.
- 69-4813. Powers and duties of the council.
- 69-4814. Hearings by board—notice.
- 69-4820. Violation of chapter or rule—notice to violator—hearing before board—notice, procedure, order, rehearing.
- 69-4821. Judicial remedies—review by district court—appeal to supreme court.
- 69-4822. Confidentiality of records.
- 69-4823. Penalties for violation of provisions, rule, or order—purpose and construction of chapter.
- 69-4824. Emergencies.
- 69-4825. Injunctions.

69-4826. Action by other parties.

69-4827. Co-operation with the council, board, and department.

69-4801. Public policy of the state. (1). * * * [Same as parent volume.]

(2) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream. "Natural" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil and water conservation practices have been applied. Conditions resulting from dams at the effective date of this act are "natural."

History: En. Sec. 121, Ch. 197, L. 1967;
amd. Sec. 1, Ch. 21, L. 1971.

second and third sentences of subsection (2) for "However, municipal or industrial pollution upstream shall not be considered natural."

Amendments

The 1971 amendment substituted the

69-4802. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) and (2). * * * [Same as parent volume.]

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals, dead animals, sediment, and all other substances that may pollute state waters;

(4). * * * [Same as parent volume.]

(5) "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any state waters, as exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any state water as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, or to livestock, wild animals, birds, fish or other wildlife, provided, however, that any discharge which is permitted by Montana water quality standards is not "pollution" for the purposes of this chapter.

(6) and (7). * * * [Same as parent volume.]

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewerage systems and treatment work;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; this section shall not apply to irrigation waters where the waters are used up within the irrigation system and said waters are not returned to any other state waters;

(10): * * * [Same as parent volume.]

(11) "Council" means the state water pollution advisory council created by this act;

(12) "Board" means the state board of health;

(13) "Department" means the state department of health;

(14) "Executive officer" means the chief administrative officer of the state department of health;

(15) "Director" means the director of water pollution control, a position created by this act;

(16) "Local department of health" means the staff, including any health officers, employed by a county, city, city-county, or district board of health.

History: En. Sec. 122, Ch. 197, L. 1967;
amd. Sec. 2, Ch. 21, L. 1971.

redefined the meaning of pollution in subdivision (5); added "this section shall not apply * * * to any other state waters" in subdivision (9); and added subdivisions (12) through (16).

Amendments

The 1971 amendment, inserted "dead animals, sediment" in subdivision (3);

69-4803. Repealed.

Repeal

Section 69-4803 (Sec. 123, Ch. 197, L. 1967), relating to classification of waters

for industrial use, was repealed by Sec. 22, Ch. 21, Laws 1971.

69-4804. Chapter applicable to drainage or seepage from artificial bodies of water privately owned. This chapter applies to drainage or seepage from all sources including that from artificial, privately owned ponds or lagoons if such drainage or seepage may reach other state waters in a condition which may pollute the other state waters.

History: En. Sec. 124, Ch. 197, L. 1967;
amd. Sec. 3, Ch. 21, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior version, see parent volume.

69-4805. Administration of chapter. Except as otherwise provided, the department, acting under the supervision of the board as to matters of policy, is responsible for administration of the provisions of this chapter.

The executive officer shall appoint a director of water pollution control to perform the duties and powers conferred upon the department by this act. The director shall meet requirements established by the board. The director shall have a minimum of five (5) years of responsible experience in water pollution control or aquatic ecology programs. His salary shall be set in accord with other members of the staff with the same degree of responsibility and training. He will be responsible for the administration of the water pollution control act within the limitations of funds and personnel assigned.

The executive officer shall, in the absence of a director of water pollution control, assign another member of the staff to perform the duties and exercise the powers of a director.

The department may use personnel of the state and local departments of health as necessary to administer the provisions of this act.

History: En. Sec. 125, Ch. 197, L. 1967;
amd. Sec. 4, Ch. 21, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

69-4806. Pollution unlawful—permits. It is unlawful to:

(1) cause pollution as defined in section 69-4802 (5), R. C. M. 1947, of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department;

(a) construct, modify, or operate a disposal system which discharges to any state waters, or

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes to any state waters; or

(3) violate any limitation imposed by a current permit.

History: En. Sec. 126, Ch. 197, L. 1967; amd. Sec. 5, Ch. 21, L. 1971.

strength of sewage, industrial wastes; or other wastes in excess of the permissive discharges specified under any existing permit"; redesignated former paragraph (2) (d) as (2) (b); deleted "new" before "outlet" in present paragraph (2) (b); added subdivision (3); and made minor changes in phraseology and style.

Amendments

The 1971 amendment combined former paragraphs (2) (a) and (2) (b) into new paragraph (2) (a); deleted a paragraph (2) (c) reading "increase the volume or

69-4807. Repealed.**Repeal**

Section 69-4807 (Sec. 127, Ch. 197, L. 1967; Sec. 1, Ch. 277, L. 1969), relating to

issuance and revocation of permits, was repealed by Sec. 22, Ch. 21, Laws 1971.

69-4807.1. Denial, modification, suspension, and revocation of permit—notice—hearing—effective date. (1) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder, and he may request a hearing before the board, in the manner stated in section 13 [69-4820] of this act, for the purpose of petitioning the board to reverse or modify the action of the department. Such hearing shall be held within thirty (30) days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. Modification of a permit shall be effective thirty (30) days after receipt of notice by the holder, unless the department specifies a later date, if the holder does not request a hearing before the board. If the holder does request a hearing before the board, no order modifying his permit shall be effective until twenty (20) days after he has received notice of the action of the board.

(2) If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately, if the department finds that the violation is likely to continue and will cause pollution the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in section 13 [69-4820] of this act and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately, unless the board directs otherwise.

History: En. Sec. 14, Ch. 21, L. 1971.

69-4808. Repealed.

Repeal of health, was repealed by Sec. 22, Ch. Section 69-4808 (Sec. 128, Ch. 197, L. 21, Laws 1971. 1967), relating to duties of the state board

69-4808.2. Duties of board of health. (1) The board shall:

(a) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(b) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(c) review from time to time, at intervals of not more than three years, established classifications of waters and standards of water purity and classification, provided that

(1) such classifications, standards, and rules as have been adopted by the state water pollution control council under section 133, chapter 197 of the Laws of 1967 [69-4813] shall be deemed, without necessity of a hearing, to have been initially adopted by the board.

(2) in revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted by the state water pollution control council under section 133, chapter 197 of the Laws of 1967 [69-4813].

(3) the board shall require that any state waters whose existing quality is better than the established standards as of the date on which such standards become effective be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of such waters, and

(4) the board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increase source of pollution to high quality waters, referred to in (3) immediately above, to provide the degree of waste treatment necessary to maintain that existing high water quality;

(d) advise, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution;

(e) make rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(f) make rules governing the issuance, denial, modification, or revocation of permits, provided, however, that:

(1) the rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that

(2) the rules may allow the issuance of a temporary permit under which pollution may result, for a period no longer than three years and

subject to no extension, if the department finds that the issuance of such a permit is proper for obtaining compliance with the applicable standards, that

(3) the rules shall provide that the department may revoke any permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and that

(4) any person introducing a new source or increased source of sewage, industrial waste, or other wastes as defined in section 69-4802 (1), (2), and (3), R. C. M. 1947, to waters and tributaries of waters classified as A-open-D-1 or higher by the board shall be required to install and maintain the highest and best degree of treatment works necessary to maintain adequately said classification, as defined in section 69-4802 (7), R. C. M. 1947, prior to the issuance of a permit by the department;

(g) hold any hearings necessary for the proper administration of this chapter;

(h) make rules for the administration of this chapter; and

(i) bring actions in court for the enforcement of this chapter.

(2) The board may:

(a) accept loans and grants from the federal government and from other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes.

History: En. Sec. 6, Ch. 21, L. 1971.

69-4809. Repealed.

Repeal

Section 69-4809 (Sec. 129, Ch. 197, L. 1967), relating to powers and duties of the state department of health, was repealed by Sec. 22, Ch. 21, Laws 1971.

69-4809.1. Duties of department of health. (1) The department shall:

(a) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes to state waters, consistently with rules made by the board;

(b) examine and approve or disapprove plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged.

(d) collect and furnish information relating to the prevention and control of water pollution; and

(e) conduct or encourage necessary research and demonstrations concerning water pollution.

(f) issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely

dumped, spilled, or otherwise deposited in or near state waters and which may pollute them.

(2) The department may:

(a) through its authorized representatives, enter upon any private or public property at reasonable times to investigate conditions relating to pollution of state waters; and

(b) issue, modify, or revoke orders for the abatement of pollution.

History: En. Sec. 7, Ch. 21, L. 1971.

69-4810. State water pollution advisory council—creation—members, appointment and term of office. There is a state water pollution advisory council whose members are:

(1) the executive officer of the state department of health;

(2) the state fish and game director;

(3) the director of the Montana water resources board;

(4) the commissioner of agriculture;

(5) eight (8) members appointed by the governor for terms of four (4) years as follows:

(a) a representative of industry concerned with the disposal of inorganic waste;

(b) a representative of industry concerned with the disposal of organic waste;

(c) a livestock feeder;

(d) a representative of municipal government;

(e) a representative of an organization concerned with fishing for sport;

(f) a representative from labor;

(g) a supervisor of a soil and water conservation district;

(h) a representative of an organization concerned with water recreation.

History: En. Sec. 130, Ch. 197, L. 1967; amd. Sec. 8, Ch. 21, L. 1971.

Amendments

The 1971 amendment substituted "advisory" for "control" in the introductory sentence; substituted "Montana water resources board" for "water conservation board" in subdivision (3); inserted the present subdivision (4); and redesignated former subdivision (4) as subdivision (5);

increased the number of members appointed under subdivision (5) from four to eight; substituted "a livestock feeder" for "a representative of agriculture" in paragraph (5) (c); and added paragraphs (e) through (h) to subdivision (5).

Cross-References

Council continued and renamed, sec. 82A-607.

69-4811. State water pollution advisory council—vacancy in office, filling—compensation of members. Terms of council members holding office on the effective date of this act shall not be affected. An appointment to an expired term shall be for four (4) years. An appointment to an unexpired term shall be for the remainder of the term. The eight (8) appointed members shall receive twenty dollars (\$20) per day plus actual and necessary expenses incurred in performing their duties. Expenses shall be paid by the department from funds appropriated and allocated to water pollution control.

History: En. Sec. 131, Ch. 197, L. 1967; amd. Sec. 9, Ch. 21, L. 1971.

Amendments

The 1971 amendment changed the num-

ber of appointed members to receive compensation from four to eight; and made a minor change in phraseology.

69-4812. State water pollution advisory council—officers—meetings—quorum—designating of deputy by member. (1) The council shall select a chairman from among its members. The executive officer shall designate a member of the staff of the department of health to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 132, Ch. 197, L. 1967; amd. Sec. 10, Ch. 21, L. 1971.

Amendments

The 1971 amendment substituted “mem-

ber of the staff of the department of health” for “member of the public health engineering staff of the department.”

69-4813. Powers and duties of the council. The council may by majority report, minority report, or report of one or more members of the council, make recommendations to the board concerning any matters relating to the administration of this act.

History: En. Sec. 133, Ch. 197, L. 1967; amd. Sec. 11, Ch. 21, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

Cross-References

Council functions transferred to department of health and environmental sciences, sec. 82A-603(1).

69-4814. Hearings by board—notice. Before streams are classified or standards established or modified, or rules made, revoked or modified, the board shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards or modification of them and any rules proposed to be made, revoked or modified shall be published at least once a week for three (3) consecutive weeks in a daily newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the board believes may be affected by the proposed action. The council shall be given not less than thirty (30) days prior to first publication to comment on the proposed action.

At a hearing held under this section, the board shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The board may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under section 13 [69-4820] of this act.

History: En. Sec. 134, Ch. 197, L. 1967; amd. Sec. 12, Ch. 21, L. 1971.

Amendments

The 1971 amendment inserted “or rules made, revoked or modified” in the first and second sentences; inserted “daily” before “newspaper of general circulation”;

substituted “board” for “council” in two instances; substituted “proposed action” for “classification or standard” at the end of the second sentence; added the last sentence of the first paragraph and the present second paragraph; and made a minor change in punctuation.

69-4815 to 69-4819. Repealed.**Repeal**

Sections 69-4815 to 69-4819 (Secs. 135 to 139, Ch. 197, L. 1967), relating to procedure for rehearing, appeal and injunction, were repealed by Sec. 22, Ch. 21, Laws 1971.

69-4820. Violation of chapter or rule—notice to violator—hearing before board—notice, procedure, order, rehearing. (1) Whenever the department has reason to believe that a violation of this chapter or any rule made under it has occurred, it shall cause written notice to be served personally or by mail upon the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of any corrective action which the department proposed to require, and the time within which such action is to be taken. For the purposes of this chapter, service by mail shall be deemed complete on the date of mailing.

(2) In a notice given under part (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. Such hearing shall be held no sooner than fifteen (15) days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(3) If the department does not require an alleged violator to appear before the board for a public hearing, he may request the board to conduct such a hearing. His request shall be in writing and shall be filed with the executive officer no later than thirty (30) days after service of a notice under subsection (1) of this section. If such a request is filed, a hearing shall be held within a reasonable time.

(4) If a hearing is held pursuant to the provisions of this section, it shall be public and shall, if the board deems it practicable, be held in any county in which the violation is alleged to have occurred. The board shall permit all parties to respond to the notice served under subsection (1), to present evidence and argument on all issues, and to conduct cross-examination required for full disclosure of the facts. The board shall keep a stenographic record of the hearing and at least one (1) copy of any written exhibits put in evidence.

(5) A representative of the board may administer oaths, examine witnesses, and issue notices of the hearing including subpoenas requiring the testimony of witnesses and the production of evidence. Witnesses shall receive the same fees and mileage as in civil actions. In case of failure to obey a notice of hearing or subpoena, the district court where the hearing is held has jurisdiction upon request by the board to issue an order requiring a person to appear and testify or produce evidence, and failure to obey shall be punished as contempt of district court.

(6) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. The order shall be accompanied by a statement of the board's findings, reasons, and con-

clusions upon all material issues of fact, law, or discretion. It shall state the date or dates by which any violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown.

(7) In addition to or instead of issuing an order, the board may initiate appropriate action for recovery of a penalty pursuant to section 17 [69-4823] of this act.

History: En. Sec. 13, Ch. 21, L. 1971.

69-4821. Judicial remedies—review by district court—appeal to supreme court. (1) Any person who has exhausted all administrative remedies available before the department and board and who is aggrieved by an order of the board may, within twenty (20) days after the date of the order, petition for review by the district court of the county in which the alleged source of pollution is located.

(2) An action for review shall be initiated by delivering a copy of a written petition for review to the executive officer of the board, and by filing the original of the petition with the clerk of the court in which review is sought. The petition shall specify the order or orders review of which is sought and shall state the grounds of the petition. When the petition is filed with the clerk of the court, the district court has jurisdiction of the action. As soon as possible in the ordinary course of business and within thirty (30) days after receipt of the petition by the board, the board shall certify to the district court the entire record and proceedings, including all evidence received in the form of documents and other exhibits and a transcript of such testimony taken by the board as any party shall request.

(3) Any person interested in the order may intervene, in the manner provided by the Rules of Civil Procedure, if he shows good cause. An intervenor is a party for the purposes of this chapter.

(4) The attorney general shall represent the board if requested, or the board may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(5) Neither the state nor the board need give a bond or make a deposit for costs upon an action for review by a district court or upon any subsequent appeal.

(6) The review by the district court shall be based solely on the record of the hearing before the board. That record shall include the notice given pursuant to section 13 (1) [69-4820 (1)] of this act, any testimony transcribed pursuant to subsection (2) of this section, any exhibits filed with the board, any motions or pleadings which were submitted to the board and any rulings made by the board with respect to them, the order under review, the statement of the board accompanying the order, and any relevant document filed in the proceeding. To the extent necessary in respect to the issues, the court shall determine whether the order of the board was (a) constitutional, (b) within the statutory jurisdiction and powers of the board, (c) issued pursuant to procedure required by

law, (d) supported by substantial evidence on the whole record or such portions of the record as may be cited by the parties, and (e) within the reasonable discretion of the board. The court shall then as appropriate, affirm, modify, or reverse the order of the board or remand the case to the board for further proceedings. The court may, if appropriate, issue an injunction directing compliance with the order of the board as affirmed or modified.

(7) Any party may appeal from the decision of the district court to the supreme court of Montana in the manner provided for civil cases.

(8) The initiation of an action for review or the taking of an appeal shall not stay the effectiveness of any order of the board, unless the court finds that there is probable cause to believe

1. that refusal to grant a stay will cause serious harm to the affected party, and

2. that any violation found by the board

(a) will not continue, or

(b) if it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

If the court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board.

History: En. Sec. 15, Ch. 21, L. 1971.

69-4822. Confidentiality of records. Any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, tend to weaken his competitive position shall be confidential unless he expressly agrees to its publication or availability to the general public or unless such information is introduced as evidence in a hearing before the board. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential; except that the party supplying the information to the board may apply to the board for confidential status for the information so supplied, and the board shall determine that the disclosure of said information is in the public interest prior to the disclosure to the public of said information. The board may use any information in compiling or publishing analyses or summaries relating to water pollution, if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section.

History: En. Sec. 16, Ch. 21, L. 1971.

69-4823. Penalties for violation of provisions, rule, or order—purpose and construction of chapter. (1) Any person who violates any provision of this chapter other than section 16 of this act, or any rule or order issued pursuant to it is guilty of an offense and subject to a fine

not to exceed one thousand dollars (\$1,000). Each day of violation constitutes a separate offense.

(2) Any person who willfully violates section 16 of this act is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1,000).

(3) Action pursuant to [sub] section (1) of this section does not bar enforcement of this chapter or of rules or orders issued pursuant to it by injunction or other appropriate remedy. The board shall institute and maintain any and all such enforcement proceedings in the name of the state.

(4) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate and control the pollution of state waters. This chapter shall not be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor shall any provision of this chapter or any act done by virtue of it be construed as estopping the state or any municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(5) All fines collected shall be deposited to the credit of the department, to be used to alleviate pollution for which no person subject to action by the department or board is responsible.

History: En. Sec. 17, Ch. 21, L. 1971.

69-4824. Emergencies. Notwithstanding any other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under it which, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department shall order such person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order shall be effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise. Notice of the order shall conform to the requirements of section 13 (1) [69-4820 (1)] of this act so far as practicable; the notice shall indicate that the order is an emergency order. Upon issuing such an order, the department shall fix a place and time for a hearing before the board, not later than five (5) days thereafter, unless the person to whom the order is directed shall request a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted in the manner specified in section 13, subsections (4), (5), and (6) [69-4820 (4), (5), (6)] of this act. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board shall be accompanied by the statement specified in section 13 (6) [69-4820 (6)] of this act. An action for review of the order of the board may be initiated in the manner specified in section 15 [69-4821] of this act. The initiation of such an action or taking of an appeal shall not stay the effectiveness of the order, unless the court shall find that

the board did not have reasonable cause to issue an order under this section.

History: En. Sec. 18, Ch. 21, L. 1971.

69-4825. Injunctions. The board may bring an action for an injunction against the continuation of any alleged violation which has been the basis of suspension or revocation of a permit by the department or against any person who fails to comply with an emergency order issued by the department by virtue of section 18 [69-4824] of this act or any final order of the board. The court to which the board applies for an injunction may issue a temporary injunction, if it finds that there is reasonable cause to believe that the allegations of the board are true, and it may issue a temporary restraining order pending action on the temporary injunction.

History: En. Sec. 19, Ch. 21, L. 1971.

69-4826. Action by other parties. Any person, association, corporation or agency of the state or federal government may apply to the board protesting any violation of this chapter. The board shall thereupon direct the department to investigate the alleged violation. The department shall make the investigation and make a written report to the board and to the person, association, corporation or agency which made the protest.

History: En. Sec. 20, Ch. 21, L. 1971.

69-4827. Co-operation with the council, board, and department. The council, board, and department may require the use of records of all state agencies and may seek the assistance of such agencies. State, county, and municipal officers and employees, including sanitarians and other employees of local department of health, shall co-operate with the council, board and department, in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

History: En. Sec. 21, Ch. 21, L. 1971.

Repealing Clause

Section 22 of Ch. 21, Laws 1971 read
 "Sections 69-4803, 69-4807, 69-4808, 69-4809, 69-4815, 69-4816, 69-4817, 69-4818, and 69-4819, R. C. M. 1947, are repealed."

Separability Clause

Section 23 of Ch. 21, Laws 1971 read
 "It is the intent of the legislative assembly that, if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 52—HOSPITALS, HOSPITAL RELATED FACILITIES, AND LONG-TERM CARE FACILITIES

Section 69-5201. Definitions.

69-5201. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) and (2). * * * [Same as parent volume.]

(3) "Long-term care facility" means a place operated for profit or not, which provides to a total of four (4) or more persons, any of the following: nursing, personal care, and maintenance; provided that this decision

applies only to such persons as are unable to properly care for themselves. "Long-term care facility" also means a place operated for profit or not, which provides sheltered care to four (4) or more aged persons not related to the operator by blood or marriage. It includes:

(a) and (b). * * * [Same as parent volume.]

(c) "intermediate care facilities" which are facilities furnishing limited nursing services and providing personal care and services to residents not in need of continuous skilled nursing care;

(d) "personal care homes" which are facilities providing personal care and services to residents not in need of skilled nursing care;

(e) "boarding homes" which are facilities providing only maintenance and sheltered care;

(f) facilities providing combinations of services provided by intermediate care facilities, extended care facilities, nursing homes, personal care homes, and boarding homes.

(4) to (9). * * * [Same as parent volume.]

History: En. Sec. 159, Ch. 197, L. 1967; subdivision (3)(c); redesignated former
amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, subdivisions (c) to (e), inclusive of sub-
Ch. 197, L. 1971. section (3) as subdivisions (d) to (f),
inclusive; and inserted "intermediate care
facilities" in subdivision (3) (f), formerly
subdivision (3) (e).

Amendments

The 1971 amendment inserted a new

69-5214. Hospital and long-term care facility advisory council, etc.

Cross-References

Council abolished, sec. 82A-609(9).

CHAPTER 54—CESSPOOLS, SEPTIC TANKS, AND PRIVIES

Section

69-5401. License required.

69-5402. Application for license—form and contents.

69-5403. Licenses—title—numbering—duration—transfer prohibited—fees, disposition.

69-5404. Vehicle of licensee—marking.

69-5405. Permit from local health officer—examination—fee.

69-5407. License not required of municipalities.

69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor.

69-5401. License required. No person, partnership, firm, or corporation shall engage in the business of cleaning cesspools, septic tanks or privies, and disposal of waste therefrom unless licensed by the state department of health and the license validated by the health officer or local sanitarian in each county where business is to be conducted. The state department of health may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the state board of health.

History: En. Sec. 193, Ch. 197, L. 1967;
amd. Sec. 1, Ch. 76, L. 1971.

tence; added "and the license validated by the health officer or local sanitarian in each county where business is to be conducted" at the end of the first sentence; and made a minor change in phraseology.

Amendments

The 1971 amendment inserted "and disposal of waste therefrom" in the first sen-

69-5402. Application for license—form and contents. Application for a license is made to the state department of health on application forms procured from the local health officer or sanitarian in the county of applicant residence. The application shall show:

- (1) the name in full, and if a partnership, the name of each partner;
- (2) place of business and the counties in which business is to be conducted;
- (3) to (6). * * * [Same as parent volume.]

History: En. Sec. 194, Ch. 197, L. 1967; amd. Sec. 2, Ch. 76, L. 1971.

Amendments

The 1971 amendment added "on application forms procured from the local

health officer or sanitarian in the county of applicant residence" at the end of the first sentence; added "and the counties in which business is to be conducted" at the end of subdivision (2); and made a minor change in phrasology.

69-5403. Licenses—title—numbering—duration—transfer prohibited — fees, disposition. Licenses issued by the state department of health shall be titled "Montana Sanitary Licensee," and numbered consecutively beginning with the number ten (10). Licenses expire on December 31 of each calendar year. Licenses are not transferable. The fee for each license is twenty-five dollars (\$25) payable at the time of application for license. Twenty dollars (\$20) of the fee shall be deposited with the county treasurer in the county of licensee residence and five dollars (\$5) forwarded with the application to the state department of health. The state fee shall be deposited in the state general fund. The county portion of the fee shall be used to defer cost of a sanitarian to enforce this act. The state department of health shall return the license to county of licensee residence for issue.

History: En. Sec. 195, Ch. 197, L. 1967; amd. Sec. 3, Ch. 76, L. 1971.

Amendments

The 1971 amendment increased the license fee from \$5.00 to \$25; added "payable at the time of application for license"

at the end of the fourth sentence; substituted the fifth, sixth, seventh and eighth sentences for a sentence reading "Fees shall be deposited in the state general fund"; and made a minor change in phrasology.

69-5404. Vehicle of licensee—marking. Persons licensed shall paint on the side of each vehicle using the words "Montana Sanitary Licensee" and immediately under those words shall paint "License No. (insert number of license)." License numbers shall be at least one and one-half (1½) inches high and in a distinct color contrasting with the background.

History: En. Sec. 196, Ch. 197, L. 1967; amd. Sec. 4, Ch. 76, L. 1971.

Amendments

The 1971 amendment substituted "using" for "used" after "each vehicle."

69-5405. Permit from local health officer—examination—fee. Each person licensed under the provisions of this chapter who cleans a cesspool, septic tank, or privy shall secure a validation signature on the license from the local health officer or sanitarian, having jurisdiction in each county in which the business will be conducted. The license shall be invalid until said validation signature is affixed. The validation signature shall be affixed only after satisfactory evidence of the applicant's knowl-

edge of sanitary principles, laws and ordinances; reliability in observing sanitary laws; and ability to clean the septic tank, cesspool or privy without endangering human health or safety and that the licensee has a permanent approved disposal site or is knowledgeable of the restrictions on disposal site locations.

History: En. Sec. 197, Ch. 197, L. 1967; amd. Sec. 5, Ch. 76, L. 1971.

Amendments

The 1971 amendment substituted "validation signature on the license" for "permit" in the first sentence; substituted "or sanitarian" for "or his authorized representative" after "local health officer" in the first sentence; added "in each county in which the business will be conducted" at the end of the first sentence; inserted a new second sentence; substituted "The validation signature shall be affixed" for "The permit shall be issued" at the beginning of the present third sentence;

substituted "evidence" for "examination" in the present third sentence; added "and that the licensee has a permanent approved disposal site or is knowledgeable of the restrictions on disposal site locations" at the end of the third sentence; deleted two final sentences reading "The permit shall contain the name of the applicant, date of cleaning, name and address of the owner of the cesspool, septic tank or privy, and the place and means of disposing of the waste. The person issuing the permit shall be paid a fee of one dollar (\$1.00)"; and made minor changes in phraseology and punctuation.

69-5407. License not required of municipalities. The license provisions of this chapter do not apply to any county or municipality or other local, state or federal governmental agency which desires to clean septic tanks, cesspools, or privies publicly owned or controlled by them. However, counties and municipalities or other local, state or federal governmental agencies shall comply with rules adopted by the state board of health for cleaning cesspools, septic tanks, or privies, and disposal or wastes from cesspools, septic tanks, or privies.

History: En. Sec. 199, Ch. 197, L. 1967; amd. Sec. 6, Ch. 76, L. 1971.

Amendments

The 1971 amendment inserted references to other local, state and federal govern-

ment agencies in the first and second sentences; added "and disposal or wastes from cesspools, septic tanks or privies" at the end of the section; and made a minor change in phraseology.

69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor. State and local health officer or sanitarians, are responsible for the enforcement of this chapter. Any person who fails to comply with provisions of this chapter or orders of a health officer or sanitarian made under this chapter for the protection of human health is guilty of a misdemeanor. Upon conviction he shall be fined not more than one hundred dollars (\$100), imprisoned for not more than thirty (30) days, or both, for each offense. Fines collected shall be deposited in the general fund of the county in which the action is brought.

History: En. Sec. 200, Ch. 197, L. 1967; amd. Sec. 7, Ch. 76, L. 1971.

Amendments

The 1971 amendment inserted references to sanitarians in two places after references to health officers.

Effective Date

Section 8 of Ch. 76, Laws 1971 read: "This act is effective January 1, 1972."

CHAPTER 58—CONTROL OF IONIZING RADIATION

69-5805. Radiation advisory committee.**Cross-References**

Committee abolished, sec. 82A-609(8).

CHAPTER 59—WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS

Section

- 69-5903. Board of certification to assist director—composition—terms of members—meetings and organization—examination of candidates for certification.
 69-5908. Application for operator's certificate—payment of fee—use of proceeds.
 69-5910. Rules and regulations of board.

69-5903. Board of certification to assist director—composition—terms of members—meetings and organization—examination of candidates for certification. (1) The governor of the state of Montana shall appoint a board of certification to advise and assist the director in the administration of the certification program. The water and waste water operators certification board shall be attached to the state board of health and shall serve as an advisory board to the state board of health in actions relating to the qualifications of water and waste water treatment plant operators. The board shall be composed of seven (7) persons as follows:

(a) to (e). * * * [Same as parent volume.]

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 239, L. 1967;
 amd. Sec. 1, Ch. 306, L. 1971.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(25).

Director of environmental sanitation replaced on board, sec. 82A-1606(3).

Amendments

The 1971 amendment inserted the second sentence, attaching the certification board to the state board of health, in subsection (1).

69-5908. Application for operator's certificate—payment of fee—use of proceeds. Any person desiring to engage in the operation of a water treatment plant, water distribution system or waste water treatment plant shall first file an application with the board for a proper certificate. The board shall charge a fee of the same amount as the license cost set forth in section 69-5909, for the filing of each application by any person and shall not act upon any application until such fee has been paid. All filing and certification fees collected hereunder shall be deposited with the state treasurer in the "Water and Waste Water Operators Certification Examining Board Account" in the state department of health earmarked revenue fund and shall be used to pay the expenses of the board as set forth in this act and for no other purpose. Moneys may be invested in accordance with procedures of investment of state moneys. In granting of such certificates, the board shall have due regard for the interest of the state of Montana to protect the drinking water supplies and the quality of its water.

History: En. Sec. 8, Ch. 239, L. 1967;
 amd. Sec. 2, Ch. 306, L. 1971.

department of health" in the third sentence; inserted the fourth sentence; and made a minor change in phraseology.

Amendments

The 1971 amendment inserted "state

69-5910. Rules and regulations of board. The board shall make such rules and regulations as are reasonably necessary to carry out the intent of this act. Before such rules and regulations become official, they shall be approved by the state board of health. The rules and regulations shall include, but are not limited to, provisions establishing the basis for classification of treatment plants in accordance with section 69-5904, provisions establishing qualifications of applicants, procedures for examination of candidates and such other provisions as are necessary for the administration of this act.

History: En. Sec. 10, Ch. 239, L. 1967;
amd. Sec. 3, Ch. 306, L. 1971.

Amendments

The 1971 amendment inserted the second sentence.

Separability Clause

Section 4 of Ch. 306, Laws 1971 read:
"The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held invalid, the remainder of this act shall continue in full force and effect."

CHAPTER 60—REFUSE DISPOSAL DISTRICTS

Section

- 69-6002. Definitions.
- 69-6007. Service fees—maintenance assessments—disposal fee.
- 69-6010. Powers and duties of board.
- 69-6012. Joint districts.
- 69-6013. Duty of county attorney.

69-6002. Definitions. As used in this act unless the context indicates otherwise:

"Commissioners" means the board of county commissioners.

"Family residential unit" means the residence of a single family.

"Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

"Refuse disposal district" means an area established with definite boundaries for the purpose of collecting and disposing of all refuse created in said district.

"Board" means board of directors as provided for in section 69-6009, R. C. M., 1947, and section 4 [69-6012] of this act.

History: En. Sec. 2, Ch. 71, L. 1969;
amd. Sec. 1, Ch. 136, L. 1971.

Amendments

The 1971 amendment added the definition of "board."

69-6007. Service fees—maintenance assessments—disposal fee. To defray the cost of maintenance and operation of said refuse disposal district, the board, shall establish a fee for service with approval of the county commissioners. This fee shall be assessed to all units in the district that are receiving a service for the purpose of maintenance and operation of said district. The fees shall be based upon a family residential unit, and fees for commercial and industrial accounts shall be based on the comparison with a typical residential unit as to volume and type of waste produced. In no case shall the fee for disposal service exceed one half (1/2) the total fee for both collection and disposal services. The month

the service begins the county assessor shall place the amount of this fee on the tax notices to be collected with the tax. If a property owner fails to pay this fee, it shall become a lien upon the property. All fees and other moneys received by the district shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which said refuse disposal district was created. Warrants upon such funds shall be drawn by the board of county commissioners upon presentation of claims approved by the board. Fees and other moneys collected by joint county refuse disposal districts may be administered by one (1) county treasurer's office upon mutual agreement by the county commissioners of any joint refuse disposal district.

History: En. Sec. 7, Ch. 71, L. 1969;
amd. Sec. 2, Ch. 136, L. 1971.

Amendments

The 1971 amendment substituted "board" for "commissioners" in the first sentence; added "with approval of the county commissioners" at the end of the first sentence; substituted a new second sentence

for a sentence reading "The commissioners shall assess the entire cost of maintenance and operation of said district on each family residential unit that is receiving this service"; inserted "The fees shall be based upon a family residential unit, and" at the beginning of the third sentence; added the fifth through ninth sentences; and made minor changes in phraseology.

69-6010. Powers and duties of board. The board of every refuse disposal district established and organized under and by virtue of this act shall have the powers and duties with the approval of the county commissioners of all counties involved:

- (1) to (3). * * * [Same as parent volume.]
- (4) To co-operate with any corporation, association, individual or group of individuals, including any agency of the federal, or state, or local government, in order to carry out effective programs.
- (5) To receive gifts, grants, or donations for the purpose of advancing the program; to acquire by gift, deed, purchase or condemnation land necessary for refuse disposal purposes.
- (6) To enforce all state or local board of health rules and regulations pertaining to the storage, collection, and disposal of refuse.
- (7) To apply for and receive from the federal government or the state government on behalf of said refuse disposal district any moneys that may be appropriated by federal or state legislative bodies for aiding such programs.
- (8) To borrow from any loaning agency any funds available for assistance in planning or financing a refuse disposal district and repay the same with the moneys received from the fees levied provided for in this act.
- (9) The board shall have the power to implement their proposed program, a section at a time. In the event that a program is implemented a section at a time, the fees may be levied only against that part of the district that is receiving the service. As the program is expanded throughout the district, that part of the district will start to pay the fee for service.

History: En. Sec. 10, Ch. 71, L. 1969;
amd. Sec. 3, Ch. 136, L. 1971.

Amendments

The 1971 amendment substituted the preliminary paragraph for a paragraph reading "The board of directors for the

refuse disposal district shall have power"; inserted "or local" before "government" in subdivision (4); added the clause relating to land acquisition at the end of subdivision (5); inserted "or the state government" in subdivision (7); substituted

"federal or state legislative bodies" for "Congress" in subdivision (7); substituted "any loaning agency" in subdivision (8) for the "the federal government"; added subdivision (9); and made minor changes in phraseology and punctuation.

69-6012. Joint districts. Joint refuse disposal districts are districts which encompass two (2) or more counties or parts thereof. A joint refuse disposal district may be created in the following manner: The commissioners of each county affected will create the district following the procedure as prescribed under sections 69-6003, 69-6004, 69-6005, and 69-6006, R. C. M., 1947. The commissioners shall appoint a joint board of directors composed of at least five (5) members, each of whom shall be property owners in the said district. The board of directors for a joint district will consist of one (1) commissioner from each county involved, one (1) member from each of the incorporated cities or towns that are included in the district, and one (1) member from each of the county or city-county boards of health. The rest of the joint board of directors shall consist of interested citizens distributed equally throughout the district, and the appointments shall be acceptable to all groups of county commissioners.

History: En. Sec. 4, Ch. 136, L. 1971.

69-6013. Duty of county attorney. The county attorney shall be the legal advisor of the refuse disposal districts and boards within the county of his jurisdiction and shall prosecute and defend all suits to which the districts may be a party.

History: En. Sec. 5, Ch. 136, L. 1971.

"Section 16-1031, R. C. M., 1947, is repealed."

Repealing Clause

Section 6 of Ch. 136, Laws 1971 read

CHAPTER 61—CONSENT BY MINORS TO MEDICAL CARE AND
PSYCHIATRIC COUNSELING

Section

69-6106. Consent of minor to psychiatric or psychological counseling valid under urgent circumstances.

69-6107. Immunity of physician or psychologist.

69-6106. Consent of minor to psychiatric or psychological counseling valid under urgent circumstances. The consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances where the need for such counseling is urgent in the opinion of the physician or psychologist involved, because of danger to the life, safety or property of a minor or of other person or persons, and the consent of the spouse, parent, custodian or guardian of the said minor cannot be obtained within a reasonable time to offset the said danger to life or safety, when executed by the said minor shall be valid and binding as if the said minor has achieved his or her majority, that is, such minor shall be deemed to have and shall have the same legal capacity to act, and the same legal obligations with regard to the giving of such consent, as a person of full legal age and capacity,

the infancy of said minor and any contrary provisions of law notwithstanding, and such consent shall not be subject to later disaffirmance by reason of such minority; and the consent of no other person or persons (including, but not limited to a spouse, parent, custodian or guardian) shall be necessary in order to authorize the psychiatric or psychological counseling to such minor, provided, however, that no parent shall be obligated for the cost of such counseling without his consent.

History: En. Sec. 1, Ch. 315, L. 1971.

Title of Act

An act providing that minors may give legal consent to obtain psychiatric or psychological counseling where need for such counseling is urgent; that such consent shall be binding on the minor and not subject to later disaffirmance by reason

of such minority; that the consent of no other person shall be necessary in order to authorize care or services provided to such minor; providing that physicians or licensed psychologists who provide care or services under the terms of this act shall incur no civil or criminal liability, except that such immunity shall not apply to negligent acts or omissions.

69-6107. Immunity of physician or psychologist. In any case arising under the provisions of this act the physician or licensed psychologist who provides the psychiatric or psychological counseling services shall incur no civil or criminal liability by reason of having provided the counseling services, but such immunity shall not apply to any negligent acts or omissions.

History: En. Sec. 2, Ch. 315, L. 1971.

CHAPTER 62—ALCOHOL AND DRUG DEPENDENCE

69-6202. Commission on alcohol and drug dependence, etc.

Cross-References

Commission abolished and functions transferred, sec. 82A-602(3).

CHAPTER 64—VOLUNTARY STERILIZATION—STATE BOARD OF EUGENICS

Section

69-6402. State board of eugenics—composition.

69-6402. State board of eugenics—composition. To carry out the purposes of this act, there is hereby created and established for Montana a state board of eugenics which shall consist of the following:

(1) to (4). * * * [Same as parent volume.]

Board members shall receive twenty-five dollars (\$25) per day for attending meetings. Board members shall also be reimbursed for actual and necessary expenses incurred in attending meetings.

History: En. Sec. 2, Ch. 332, L. 1969; amd. Sec. 1, Ch. 74, L. 1971.

the act should be in effect from and after its passage and approval. Approved February 27, 1971.

Amendments

The 1971 amendment added the final paragraph, providing for per diem and expenses.

Cross-References

Board continued in department of institutions, sec. 82A-805.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

Effective Date

Section 2 of Ch. 74, Laws 1971 provided

CHAPTER 65—MONTANA ENVIRONMENTAL POLICY ACT

Section

- 69-6501. Short title.
 69-6502. Purpose of act.
 69-6503. Declaration of state policy for the environment.
 69-6504. General directions to state agencies.
 69-6505. Review of statutory authority and administrative policies to determine deficiencies or inconsistencies.
 69-6506. Specific statutory obligations unimpaired.
 69-6507. Policies and goals supplementary.
 69-6508. Environmental quality council.
 69-6509. Term of office.
 69-6510. Meetings.
 69-6511. Appointment and qualifications of an executive director.
 69-6512. Appointment of employees.
 69-6513. Term and removal of the executive director.
 69-6514. Duties of executive director and staff.
 69-6515. Examination of records of government agencies.
 69-6516. Hearings by council—enforcement of subpoenas.
 69-6517. Consultation with other groups—utilization of services.

69-6501. Short title. This act may be cited as the "Montana Environmental Policy Act."

History: En. Sec. 1, Ch. 238, L. 1971.

Title of Act

An act to establish a state policy for

the environment and to establish an environmental quality council and setting forth its powers and duties and providing an effective date.

69-6502. Purpose of act. The purpose of this act is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the state; and to establish an environmental quality council.

History: En. Sec. 2, Ch. 238, L. 1971.

69-6503. Declaration of state policy for the environment. The legislative assembly, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state of Montana, in co-operation with the federal government and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Montanans.

(a) In order to carry out the policy set forth in this act, it is the continuing responsibility of the state of Montana to use all practicable means, consistent with other essential considerations of state policy, to

improve and co-ordinate state plans, functions, programs, and resources to the end that the state may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Montanans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our unique heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(b) The legislative assembly recognizes that each person shall be entitled to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

History: En. Sec. 3, Ch. 238, L. 1971.

69-6504. General directions to state agencies. The legislative assembly authorizes and directs that, to the fullest extent possible.

(a) The policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in this act, and

(b) all agencies of the state shall

(1) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(2) identify and develop methods and procedures, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations;

(3) include in every recommendation or report on proposals for projects, programs, legislation and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the environmental quality council and to the public, and shall accompany the proposal through the existing agency review processes.

(4) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(5) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national co-operation in anticipating and preventing a decline in the quality of mankind's world environment;

(6) make available to counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(7) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(8) assist the environmental quality council established by section 8 [69-6508] of this act.

History: En. Sec. 4, Ch. 238, L. 1971.

69-6505. Review of statutory authority and administrative policies to determine deficiencies or inconsistencies. All agencies of the state shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this act and shall propose to the governor and the environmental quality council not later than July 1, 1972, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this act.

History: En. Sec. 5, Ch. 238, L. 1971.

69-6506. Specific statutory obligations unimpaired. Nothing in section 3 [69-6503] or 4 [69-6504] shall in any way affect the specific statutory obligations of any agency of the state

(a) to comply with criteria or standards of environmental quality,

(b) to co-ordinate or consult with any other state or federal agency, or

(c) to act, or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

History: En. Sec. 6, Ch. 238, L. 1971.

69-6507. Policies and goals supplementary. The policies and goals set forth in this act are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

History: En. Sec. 7, Ch. 238, L. 1971.

69-6508. Environmental quality council. The environmental quality council shall consist of thirteen (13) members to be as follows:

(a) The governor or his designated representative shall be an ex officio member of the council and shall participate in council meetings as a regular member.

(b) Four (4) members of the senate and four (4) members of the house of representatives appointed before the sixtieth legislative day in the same manner as standing committees of the respective houses are appointed. A vacancy on the council occurring when the legislative assembly is not in session shall be filled by the selection of a member of the legislative assembly by the remaining members of the council. No more than two (2) of the appointees of each house shall be members of the same political party.

(c) Four (4) members of the general public to be appointed by the governor with the consent of the senate.

In considering the appointments of (b) and (c) above, consideration shall be given to their qualifications to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 3 [69-6503] of this act; to be conscious and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 8, Ch. 238, L. 1971.

69-6509. Term of office. The four (4) council members from the house of representatives shall serve for two (2) years and may be reappointed. Two (2) council members from the senate, one from each political party, and two (2) council members from the general public shall serve for four (4) years, and these members may be reappointed for a two (2) year term. Two (2) council members from the senate, one from each political party, and two (2) council members from the general public shall serve for two (2) years and these members may be reappointed for a four (4) year term. In no case shall a member of the council serve more than six (6) years.

The council shall elect one of its members as chairman and such other officers as it deems necessary. Such officer shall be elected for a term of two (2) years.

History: En. Sec. 9, Ch. 238, L. 1971.

69-6510. Meetings. The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council shall, unless he is a full-time salaried officer or employee of this state, be paid twenty-five dollars (\$25) for each day in which he

is actually and necessarily engaged in the performance of council duties, and shall also be reimbursed for actual and necessary expenses incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members, but shall be reimbursed for their expenses.

History: En. Sec. 10, Ch. 238, L. 1971.

69-6511. Appointment and qualifications of an executive director. The council shall appoint the executive director and set his salary. The executive director shall hold a degree from an accredited college or university with a major in one of the several environmental sciences and shall have at least three (3) years of responsible experience in the field of environmental management.

He shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 3 [69-6503] of this act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 11, Ch. 238, L. 1971.

69-6512. Appointment of employees. The executive director, subject to the approval of the council may appoint whatever employees are necessary to carry out the provisions of this act, within the limitations of legislative appropriations.

History: En. Sec. 12, Ch. 238, L. 1971.

69-6513. Term and removal of the executive director. The executive director is solely responsible to the environmental quality council. He shall hold office for a term of two (2) years beginning with July 1 of each odd-numbered year. The council may remove him for misfeasance, malfeasance or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 13, Ch. 238, L. 1971.

69-6514. Duties of executive director and staff. It shall be the duty and function of the executive director and his staff

(a) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in section 3 [69-6503] of this act, and to compile and submit to the governor and the legislative assembly studies relating to such conditions and trends;

(b) to review and appraise the various programs and activities of the state agencies in the light of the policy set forth in section 3 [69-6503] of this act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such

policy, and to make recommendations to the governor and the legislative assembly with respect thereto;

(c) to develop and recommend to the governor and the legislative assembly, state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(d) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(e) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(f) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the legislative assembly requests;

(g) to analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences, and assist in preparation of reports for use by legislative committees, administrative agencies, and the public.

(h) to consult with, and assist legislators who are preparing environmental legislation, to clarify any deficiencies or potential conflicts with an overall ecologic plan.

(i) to review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among such activities, and with a general ecologic perspective, and to suggest legislation to remedy such situations.

(j) to transmit to the governor and the legislative assembly annually, and make available to the general public annually, beginning July 1, 1972, an environmental quality report concerning the state of the environment which shall contain

(1) the status and condition of the major natural, man-made, or altered environmental classes of the state, including, but not limited to, the air, the aquatic, including surface and ground water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment;

(2) the adequacy of available natural resources for fulfilling human and economic requirements of the state in the light of expected population pressures;

(3) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the state in the light of expected population pressures;

(4) a review of the programs and activities (including regulatory activities) of the state and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and

(5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

History: En. Sec. 14, Ch. 238, L. 1971.

69-6515. Examination of records of government agencies. The environmental quality council shall have the authority to investigate, examine and inspect all records, books and files of any department, agency, commission, board or institution of the state of Montana.

History: En. Sec. 15, Ch. 238, L. 1971.

69-6516. Hearings by council—enforcement of subpoenas. In the discharge of its duties the environmental quality council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council, or any committee thereof, or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the environmental quality council to compel obedience by proceedings for contempt as the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

History: En. Sec. 16, Ch. 238, L. 1971.

69-6517. Consultation with other groups—utilization of services. In exercising its powers, functions, and duties under this act, the council shall

(a) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments and other groups, as it deems advisable; and

(b) utilize, to the fullest extent possible, the service, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the commission's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

History: En. Sec. 17, Ch. 238, L. 1971.

Effective Date

Section 18 of Ch. 238, Laws 1971 pro-

vided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

CHAPTER 66—PASSENGER TRAMWAYS

Section

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69-6601. Policy of state. In order to safeguard the life, health, property and welfare of the citizens of Montana while using passenger tramways, as defined in section 2 [69-6602] of this act, it shall be the policy of the state to protect its citizens and visitors from unnecessary mechanical hazards in the design construction and operation of passenger tramways, but not from the hazards inherent in the sports of mountaineering, skiing and hiking, or from the hazards of the area served by the skier or other sportsman; and that periodic inspections be required of passenger tramways with a view to assuring that each one of them meets the rules and regulations as set forth by the Montana state aerial tramway board. The state, through the passenger tramway safety board, shall register all passenger tramways in the state, establish reasonable standards of design, construction and operational practices and cause to be made such inspections as may be necessary in carrying this policy into effect.

History: En. Sec. 1, Ch. 436, L. 1971.

Title of Act

An act relating to the inspection of passenger tramways; providing for crea-

tion of a passenger tramway safety board, term of office, and compensation of board members, powers and duties of the board, passenger tramway registration, registration fees, and judicial review.

69-6602. Definitions. As used in this act:

(1) The word "board" means the passenger tramway safety board created by section 3 [69-6603].

(2) The word "industry" means the passenger tramway business activities of all those persons in the state who own, manage, or direct the operation of passenger tramways.

(3) The word "operator" means a person, including any political subdivision or instrumentality thereof, who owns, manages or directs the operation of a passenger tramway.

(4) The word "area" means the area, terrain or ski slopes served by a passenger tramway.

(5) The words "passenger tramway" mean a device used to transport passengers by means of any of the following:

(a) Two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to, and suspended

from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar devices;

(b) Multi-car aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar devices;

(c) Skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar devices;

(d) Chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices;

(e) J bar, T bar or platter pull, so-called, and similar types of devices or means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) Rope tow, a type of transportation which pulls the skiers, riding on skis as the skier grasps the rope or wire rope manually, or similar devices.

History: En. Sec. 2, Ch. 436, L. 1971.

69-6603. Passenger tramway safety board created—composition.

There is hereby created a passenger tramway safety board. The board shall consist of six (6) appointive members, and one (1) ex officio member who shall be the state fish and game director. The appointive members shall be appointed by the governor, from persons representing the following interests: Two (2) members to represent the industry; two (2) members to represent the public at large; one (1) member who is an engineer licensed as such in Montana, and one (1) member who shall represent the United States forest service. The United States forest service representative shall be an engineer qualified in ski lift engineering and recommended by the regional forester in Region 1. The governor, in making such appointments, shall request and consider recommendations made to him by the membership of the particular interest from which the appointments are to be made.

History: En. Sec. 3, Ch. 436, L. 1971.

69-6604. Terms of office of board members—vacancy—reimbursement of expenses. Of the first appointments, two (2) members shall be appointed for a term of one (1) year, two (2) for a term of two (2) years, and two (2) for a term of three (3) years and until their successors are appointed and qualified. All terms shall commence on July 1, 1971. Vacancies in the board shall be filled through appointment by the governor for the unexpired term. The appointive members of the board shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in their official duties. The members of the board appointed from the United States forest service shall serve for such period as such federal agency shall determine, and shall serve without compensa-

tion or reimbursement of expenses. Reimbursement shall be made from fees collected by the board for services rendered by it. The state fish and game director, as ex officio member of the board, shall serve without additional compensation, as a public official, shall supply the board with such office accommodation, space, equipment and secretarial assistance as he may in his discretion consider adequate for the board. Reasonable compensation as may be agreed upon from time to time by the state fish and game director and board shall be paid the fish and game commission for use of its office facilities upon the state fish and game director's demand.

History: En. Sec. 4, Ch. 436, L. 1971.

69-6605. Registration of tramways required. No passenger tramway shall be operated in this state unless it has been and continues to be registered with the board; provided, however, that the initial application for the registration of a passenger tramway shall permit the operator to operate such passenger tramway until final action on the application shall have been taken by the board; and if an operator files an application for the registration of a passenger tramway with the board which at that time is registered, then the operator may continue the operation of such passenger tramway under the existing registration until the board takes final action on the pending application and shall have (a) issued a certificate to the operator, or (b) given written notice to the operator that the passenger tramway has not qualified for certification.

History: En. Sec. 5, Ch. 436, L. 1971.

69-6606. Application for registration. On or before October 1, 1971, and each year following on or before October 1, every operator of a passenger tramway shall apply to the board, on forms prepared by it, for registration of the passenger tramways owned, operated, or managed by him. The application shall contain such information as the board may reasonably require in order for it to determine whether the passenger tramways sought to be registered comply with the intent of this act as specified in section 1 [69-6601] and the rules and regulations promulgated by the board pursuant to section 10 [69-6610].

History: En. Sec. 6, Ch. 436, L. 1971.

69-6607. Issuance of certificates. (1) The board shall issue to the applying operator registration certificates for each passenger tramway owned, managed, or operated by such operator when it is satisfied:

(a) That the facts stated in the application are sufficient to enable the board to fulfill its duties under this article; and

(b) That each such passenger tramway sought to be registered complies with the rules and regulations of the board promulgated pursuant to section 10 [69-6610].

(2) In order to satisfy itself that the conditions described in paragraphs (a) and (b) of subsection (1) of this section have been fulfilled, the board may cause to be made such inspections described in section 11 [69-6611] as it may reasonably deem necessary.

(3) When an operator installs a passenger tramway subsequent to October 1 of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon the receipt of such supplemental application, the board shall proceed immediately to initiate proceedings leading to the registration or rejection of registration of such passenger tramway pursuant to the provisions of this chapter.

(4) Each registration shall expire on September 30 of the year next following the year of issuance.

(5) Each operator shall cause the registration certificate for each passenger tramway registered to be displayed conspicuously at the place where passengers load.

History: En. Sec. 7, Ch. 436, L. 1971.

69-6608. Fees. The application for registration, or supplemental application, shall be accompanied by such annual fees as the board may fix from year to year, not to exceed the following annual fees: passenger tramways described in section 2 (5) (e) and (f) [69-6602 (5) (e) and (f)], twenty-five dollars (\$25) each; (c) and (d), fifty dollars (\$50) each; (a) and (b), one hundred dollars (\$100) each.

History: En. Sec. 8, Ch. 436, L. 1971.

69-6609. Deposit of fees. All fees collected by the board shall be deposited in an earmarked revenue fund—passenger tramway safety account.

History: En. Sec. 9, Ch. 436, L. 1971.

69-6610. Additional powers and duties of board. (1) In addition to all other powers and duties conferred and imposed upon the board by this article, the board shall have and exercise the following powers and duties:

(a) To adopt reasonable rules and regulations relating to public safety in the design, construction and operation of passenger tramways, but which shall not relate or pertain to an area served by a passenger tramway. In adopting such rules and regulations the board shall use as a guideline the standards contained in "The American National Standards Institute—Safety Requirements for Aerial Passenger Tramways." ANSI B 77.1—1970, as amended from time to time, or equivalent, and as amended or supplemented from time to time by the board, and shall not be discriminatory in their application to operators of passengers tramways, and shall hold hearings and take in all evidence relating to the adoption of these rules and regulations; and the board shall supply to each operator a copy of its rules and regulations and each amendment thereto or revision thereof.

(b) To hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers and records relevant to any inquiry;

(c) To approve, deny, revoke, and renew the registrations provided for in this chapter;

(d) To cause the prosecution and enjoinder of all persons violating the provisions of this chapter and incur the necessary expenses thereof;

(e) To elect officers and adopt a seal which may be affixed to all registrations issued by the board;

(f) To employ, within the funds available, and prescribe the duties of a secretary and such other personnel as the board shall deem necessary.

History: En. Sec. 10, Ch. 436, L. 1971.

69-6611. Inspection of tramways. The board may cause to be made such inspection of the design, construction, operation, and maintenance of passenger tramways as the board may reasonably require. The board may employ qualified engineers to make such inspections for reasonable fees plus expenses. If, as the result of an inspection, it is found that a violation of the board's rules and regulations exists, or a condition in passenger tramway construction, operation or maintenance exists endangering the safety of the public, an immediate report shall be made to the operator whose passenger tramway has received such inspection and to the board for appropriate investigation and order.

History: En. Sec. 11, Ch. 436, L. 1971.

69-6612. Order for corrective action and compliance. If, after investigation, the board finds that a violation of this chapter or any of its rules or regulations exists, or that there is a condition in passenger tramway construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. Such order shall be served upon the operator involved in such violation personally or by registered mail at the board's election, and return shall be made as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 436, L. 1971.

69-6613. Remedies to enforce compliance. If any operator fails to comply with a legal order, rule or regulation of the board, the board, at its election, may

(a) Suspend the registration of the affected passenger tramway until the operator complies therewith; or

(b) Bring injunctive proceedings in the district court of the judicial district in which the affected passenger tramway is located, to compel compliance therewith. In such proceedings the board shall not be required to post bond.

History: En. Sec. 13, Ch. 436, L. 1971.

69-6614. Judicial review. Any order of the board adverse to an operator may be appealed by the operator to the district court of the district wherein is located his passenger tramway which is the subject

of such order, and said district court shall conduct a proceeding, de novo, and the decision of the district court shall be subject to appeal to the supreme court of Montana, as in civil cases.

History: En. Sec. 14, Ch. 436, L. 1971.

69-6615. Tramways not common carrier or public utilities. Passenger tramways shall not be construed to be common carrier or public utilities for the purposes of regulation within the meaning of the laws of the state of Montana.

History: En. Sec. 15, Ch. 436, L. 1971.

69-6616. Unlawful to endanger life or cause damage. It shall be unlawful for any person riding or using a passenger tramway to do so in such manner as to endanger the life and safety of other persons or cause damage to passenger tramway equipment.

History: En. Sec. 16, Ch. 436, L. 1971.

69-6617. Violation a misdemeanor. Any person who violates section 16 [69-6616] shall be guilty of a misdemeanor.

History: En. Sec. 17, Ch. 436, L. 1971.

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